

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
GULF, MOBILE AND OHIO RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad, that:

1. Carrier violated and continues to violate the Agreement between the parties when it requires or permits officials and employees not covered by the Agreement to transmit and/or receive messages and reports at Meridian, Mississippi and Artesia, Mississippi on October 4, 1957 and subsequent dates.

2. Carrier shall compensate the senior idle employees, extra in preference, on the seniority district, in the amount of a day's pay for each eight hour shift during which violations occur commencing October 4, 1957 and continuing thereafter on a day to day basis until violations are corrected.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

MERIDIAN, MISSISSIPPI

Meridian, Mississippi is a station on the Southern Division of this Carrier's lines. The Division Superintendent's office is located there along with the train dispatcher's office. At the time cause for this claim arose there were three telegrapher's positions providing continuous communication service around the clock in a telegraph office, known as "RK" office, located near the Superintendent's office. This Carrier also maintains a freight yard facility at this point for the usual purpose of switching and making up trains and storing cars. The yard office for the South Yard at Meridian is located about one and one-half miles south of "RK" telegraph office.

At South Yard, Meridian, this Carrier has established an office of communication equipped with all telephone communication circuits including the train dispatchers' circuit and has assigned the work of transmitting and/or

This same holding is found in First Division Award 16527 — Brotherhood of Railroad Trainmen vs. Los Angeles Junction Railway Company, Referee Charles Loring, decided November 30, 1953. In denying the claim in Award 16527, the Referee pointed out:

"These claims are made in behalf of an engine foreman and crew '(or the proper crew who stood to be called for service).' The carrier cannot be required to search its files and records in order to support claimants' grievance." (Emphasis ours.)

* * * * *

CONCLUSION

The record conclusively shows that other than telegraphers have for many years used the telephone. At the time the current Agreement was entered into (June 1, 1953) the telephone system between Mobile, Alabama; Artesia, Mississippi; and, Tuscaloosa, Alabama, had been in use for approximately eleven years. Telephones have been used by other than telegraphers on other parts of the railroad since 1925. Throughout this time various employees made use of the telephone. It was the custom and practice for employees to daily discuss various problems on the telephone in the performance of their duties. This practice has continued since the current Agreement was negotiated.

Knowing that the agreement between the parties did not provide the exclusive rights to telegraphers referred to in this claim, twice the Organization has proposed that the contract be enlarged to provide a basis for the claims. Neither proposal has been accepted. A sustaining claim in this case would be tantamount to writing into the contract that which the parties to the contract considered and purposely omitted. The telephone conversations referred to in this claim took only a matter of seconds. It would be an unnecessary waste of revenues and man-power, as well as impairment of efficiency of operations, to require that only telegraphers could use the telephone to the extent referred to in this claim. For the contract to contain such a requirement would necessarily be by specific language such as that proposed and rejected. The claims are contrary to the Agreement and the accepted practice and application.

The claim is totally without merit and should be denied.

Carrier reserves the right to make an answer to any further submission of the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute is the same in all material respects as in Award No. 11730. We adopt the opinion therein as determinative of the issues in this dispute.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January 1964.