

Award No. 12079

Docket No. TE-11743

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:

Carrier violated the Agreement between the parties when it required or permitted employes or officials, not covered by the Agreement, to transmit and receive messages as follows:

1(a). On February 5, 1959, General Freight Traffic Manager J. H. Walkemeyer at Mobile, Alabama, transmitted a message to Terminal Trainmaster G. D. Fikes at Artesia, Mississippi.

(b). Carrier shall be required to compensate the senior idle telegrapher, O. B. Adams, Artesia, in the amount of a day's pay (8 hours) for February 5, 1959.

2(a). On February 16, 1959, General Freight Traffic Manager J. H. Walkemeyer at Mobile, Alabama, transmitted and received messages to and from Okolona, Mississippi.

(b). Carrier shall be required to compensate the senior idle telegrapher, W. L. Adams, in the amount of a day's pay (8 hours) for February 16, 1959.

3(a). On February 24, 1959, Terminal Trainmaster Massing at Okolona transmitted and received messages to and from Artesia.

(b). Carrier shall be required to compensate the senior idle telegrapher, J. A. Pilkinton, Artesia, in the amount of a day's pay (8 hours) for February 24, 1959.

4(a). On March 2, 1959, Assistant General Freight Agent R. L. Lanigan at Mobile transmitted a message to Artesia.

(b). Carrier shall be required to compensate the senior idle telegrapher, W. L. Adams, in the amount of a day's pay (8 hours) for March 2, 1959.

5(a). On March 20, 1959, the train crew caller clerk at Iselin Yard, Tennessee, transmitted a message to Union City, Tennessee.

(b). Carrier shall be required to compensate the senior idle telegrapher, extra in preference, in the amount of a day's pay (8 hours) for March 20, 1959.

6(a). On April 15, 1959, yard clerk Smith at Tamms, Illinois, received and transmitted messages from and to Venice.

(b). Carrier shall be required to compensate C. B. McNeilly, second trick telegrapher at Tamms, in the amount of a minimum call payment.

7(a). On April 15, 1959, a yard clerk at the yard office, Venice, Illinois, transmitted and received messages to and from Tamms.

(b). Carrier shall be required to compensate the senior idle telegrapher, extra in preference, in the amount of a day's pay (8 hours) for April 15, 1959.

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

The cases listed above in the Statement of Claim are all violations of the scope rule of the Agreement and are what may be generally termed communication violations other than train orders. Rules, in addition to the scope rule, come into play to confirm the violations and to determine the amount of reparation due employees because of the breach of contract; however, the scope rule is the controlling rule and reads as follows:

"RULE 1

Scope

(a) This agreement shall govern the employment and compensation of manager-operators, wire chiefs, telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, clerk-telegraphers, clerk-telephoners, teletype and/or printer operators (to the extent covered by agreement dated October 27, 1947), towermen, levermen, tower and train directors, block operators, and staffmen, specified in wage scale, and analogous positions hereafter established; also such agents as are listed herein.

(b) The word 'employee' as used in this agreement shall include all classifications coming within the scope of this agreement unless specific classifications of employees are set forth."

The above scope rule covers the work accruing to the classes set forth therein. Further comment on this rule and other rules will be introduced later in this submission.

The stations involved in the instant dispute are located on the Southern and Northern Divisions of this Carrier, which were formerly the Mobile and Ohio Railroad. The Gulf, Mobile and Ohio Railroad (GM&O), respondent Carrier here, is made up of three railroad companies and a portion of another.

by the proposals of the Organization to enlarge and expand the contract to justify the claims. The accepted practice of others than telegraphers using the telephone has by innumerable incidents been well established and is a matter of common knowledge to the negotiators of the contract. An intent to change such common and accepted practices can only be accomplished through clear and specific provisions of the Agreement, which are totally absent in this case.

The claims are totally without merit and should be denied.

(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, find and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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.