

Award No. 12152
Docket No. TE-10154

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway that:

Carrier violated the rules of the Telegraphers' Agreement when on October 22, 1956, it required or permitted Conductor Carter, an employe not under the Agreement, on Train No. 56 to handle (receive, copy and deliver) train order No. 733 at 11:14 P.M., at Ringgold, Virginia, direct from the train dispatcher.

EMPLOYEES' STATEMENT OF FACTS: Mr. Q. B. Carter is the regularly assigned agent at Ringgold, Virginia, and has regular assigned hours of 8:00 A.M. to 5:00 P.M., with one hour off for lunch, 12 Noon to 1:00 P.M. His work week is Monday through Sunday, with rest days of Saturday and Sunday.

On October 22, 1956, Conductor Carter in charge of train No. 56 stopped at Ringgold and reported to the dispatcher his presence at this location. The dispatcher put out a train order No. 733, which changed the meet order that train No. 56 had with train No. 11. Train order No. 733 reads as follows:

19 No. 733

October 22, 1956

To C&E No. 56

Ringgold, Va.

Order No. 729 is annulled. No. 11 eleven eng 6207 take siding meet No. 56 fifty six eng 2103 at Mossingford.

RTN

Comp. 1114 PM Condr. Carter No. 56

There was no emergency on October 22, 1956. Claim was filed for the violation when Conductor Carter performed the work that had been exclusively reserved by the agreement to the employes who are working under this agreement. There is no telegraph or telephone office maintained at Ringgold,

"The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties. If inequities among employees arise by reason thereof, this Division is without authority to correct them, as it has not been given equity powers. In other words, we cannot make a rule or modify existing rules to prevent inequities thus created. Renegotiation thereof is the manner provided by the Railway Labor Act, which is the proper source of authority for that purpose. See Award 5703. See, also, Awards 4439, 5864, 2491.

"The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance." See Awards 3523, 6018, 5040, 5976."

The Board having heretofore recognized the limitations placed upon it by law, and the fact that it is without authority to grant new rules or modify existing rules such as here demanded by the ORT and will, therefore, not attempt to further restrict Carrier's inherent rights, can make a denial award for this one reason, if for no other, and there are others.

CONCLUSION

Carrier has proven that:

(a) Claim which the ORT here attempts to assert is **not** the claim presented to the Carrier and handled in the usual manner as required by the Railway Labor Act, Board Rules of Procedure, and the effective agreement. It is, therefore, barred, and the Board has no jurisdiction over it and should, therefore, dismiss it for want of jurisdiction.

(b) Without prejudice to its position that the Board has no jurisdiction over the claim which the ORT here attempts to assert, and without waiving any of its rights under the law, the effective agreement or Board Rules of Procedure, Carrier submits that the effective Telegraphers' Agreement has **not** been violated, as alleged, that the point at issue has heretofore been conceded by the ORT, that prosecution of the claim is nothing more than an effort by the ORT to establish new rules and working conditions by an award of the Adjustment Board rather than by following the processes of collective bargaining, and that, in such situation, the Board cannot sustain the claim except by disregarding the plain, unambiguous language of the agreement in evidence, which it has heretofore recognized that it would not do.

(c) While claim should be dismissed for want of jurisdiction, the Board has no alternative other than make a denial award in event it assumes jurisdiction and considers the claim under agreement rules.

(Exhibits not reproduced.)

OPINION OF BOARD: This case is the same in all material respects as in Docket No. TE-9988, Award No. 12150. We adopt the opinion therein as determinative of the issues in this case.

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 29th day of January 1964.