

Award No. 12160
Docket No. TE-10494

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:

1. Carrier violated Rule 1, Scope, of the Telegraphers' Agreement when on June 10, 1957, it caused, required or permitted Conductor O. L. Fisher, a train service employe not covered by the Telegraphers' Agreement, to communicate by telephone with the dispatcher and handle (listen to and repeat 'I heard the order'), Train Order No. 20 at Winston, Virginia.

2. Carrier shall compensate A. P. Ford, senior idle employe on rest day, Washington Division at Orange, Virginia, seniority dated February 20, 1940, for one day (8 hours) at the rate of \$2.17½ per hour, \$17.40 plus 28 cents Rule 33, total \$17.68 for the violation aforesaid.

EMPLOYES' STATEMENT OF FACTS: On June 10, 1957, about 4:20 P. M., Conductor O. L. Fisher, in charge of Extra 2132 South, used the telephone while at Winston, Virginia, and received and copied the following train order #20:

"Form 19	June 10, 1957
Order No. 20	At Winston, Va.
To—C&E Extra 2132	
Extra 2132 has right over opposing trains on Northbound track Winston to crossover at Mitchell not exceeding thirty miles per hour.	
	J.W.S.
Made complete at 4:24 P. M. Conductor O. L. Fisher operator."	

At the same time Conductor Fisher received this order at Winston, Virginia, the operator on duty at Orange, Virginia, copied the same train order. Upon receipt of the order, Conductor Fisher used this order as authority to move his train over Northbound tracks from Winston, Virginia to Mitchell, Virginia. When Conductor Fisher arrived at Mitchell, Virginia, he again used

Act. The Board has heretofore held that it would not take such action.

In Third Division Award 6007, Referee Messmore, it was held:

"In determining the rights of the parties it is our duty to interpret the applicable rules of the parties' agreement as they are written. It is not our privilege or right to add thereto. See Award 4435."

In Third Division Award 6828, Referee Messmore, it was held:

"The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties. In 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 that it is without authority under the law to grant new rules or modify existing rules as the ORT here demands, must, as the only alternative, make a denial award.

CONCLUSION

Carrier has proven that:

(1) There has not been any violation of the effective Telegraphers' Agreement as alleged.

(2) The point here at issue has heretofore been conceded by the ORT.

(3) Claim represents nothing more than a demand by the ORT that the Board establish a new rule or working condition by an award of the Adjustment Board.

The Board, having heretofore recognized that it is without authority under the law to grant new rules or modify existing rules as here demanded by the ORT, has no alternative but to hold that there has not been any violation of the effective Telegraphers' Agreement and makes a denial award.

All evidence submitted in support of Carrier's position is known to employe representatives.

Carrier, not having seen the ORT's submission, reserves the right, after doing so, to present such additional evidence and argument as may be necessary.

(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.