

Award No. 12161

Docket No. TE-10379

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 the Telegraphers' Agreement when on February 28, 1957, it required or permitted Mr. Coper, Fireman, Train No. 35, to copy, record and deliver Train Order No. 21, addressed to No. 35, while at or near Rowland, South Carolina, M. P. 512.

2. Carrier shall compensate senior idle extra telegrapher S. H. Watkins, or the senior idle extra telegrapher to be determined by a joint check of the Carrier's records, or if no idle extra telegraphers, then the senior idle regular employe, for one day's pay (8 hours) at the rate of \$2.11 per hour, for the violation which occurred at Rowland, South Carolina on February 28, 1957.

EMPLOYES' STATEMENT OF FACTS: Rowland, South Carolina is located at or near Mile Post 512. On February 28, 1957, Fireman Coper, on Train No. 35, received, copied and delivered Train Order No. 21 direct from the dispatcher by use of a telephone at Rowland. Train Order No. 21, Form 21-A, read as follows:

Form 21-A

(For Use Only in CTC Territory)

SOUTHERN RAILWAY SYSTEM

Order No. 21

To C&E Train No.....

C&E, Engine No. 35 Rowland

Date Feb 28 1957

Block signals between Rowland and Seneca

(if on two or more tracks, identify track to be used)

Track #1 Rowland to Courtenay

Track #2 Courtenay to Seneca

displaying Stop may be passed after stopping then proceeding at restricted speed expecting to find a train in the block, broken rail, obstruction or switch not properly set.

This order void after 5:01 AM M.

JFA Chief Dispatcher

Coper, Fireman Conductor or Engineman

Made Complete 3:58 A M.

MAIL THIS FORM TO CHIEF DISPATCHER WHEN FULFILLED

tion of the effective Telegraphers' Agreement as alleged, and, further, that the ORT has heretofore conceded the point here at issue.

The Board, having heretofore recognized that it is without authority under the law to grant new rules or modify existing rules, as the ORT is clearly demanding, has no alternative but to hold that the effective Telegraphers' Agreement has not been violated and make 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.