

Award No. 12162

Docket No. TE-10387

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 March 19, 1957, it required or permitted Conductor T. M. Garrett, to copy, record and deliver Train Order No. 96 addressed to Engine 2238, at Goodwin, Georgia, M. P. 626.3.

2. Carrier shall compensate extra telegrapher A. M. Harrison, or the senior idle extra telegrapher to be determined by a joint check of the Carrier's records, for one day's pay (8 hours) at the rate of \$2.05 per hour, for the violation which occurred at Goodwin, Georgia on March 19, 1957.

EMPLOYEES STATEMENT OF FACTS: Goodwin, Georgia is located at or near Mile Post 626.3. There are no positions under the Telegraphers' Agreement regularly assigned at this location.

On March 19, 1957, Conductor Garrett of Engine No. 2238 copied, recorded and delivered Train Order No. 96 addressed to C&E Engine 2238 at Goodwin. The train order was copied directly from the dispatcher by telephone. Train Order No. 96 reads as follows:

Form 21-A
(For Use Only in CTC Territory)
SOUTHERN RAILWAY SYSTEM

Order NO. 96

To (C&E, Train No.

(C&E, Engine No. 2238, Goodwin, Ga. Date March 19, 1957

Block signals between Goodwin and Foremost
(if on two or more track, identify track to be used) Track No. 1
displaying Stop may be passed after stopping then proceeding at re-
stricted speed expecting to find a train in the block, broken rail,
obstruction or switch not properly set.

This order void after 11:30 AM M.

JFA Chief Dispatcher
T. M. Garrett, Condr. Conductor or Engineman

Made Complete 11:14 AM.

MAIL THIS FORM TO CHIEF DISPATCHER WHEN FULFILLED

collective bargaining. 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. 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 that it does not have 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 make a denial award.

CONCLUSION

Carrier has proven that there has not been any violation of the effective Telegraphers' Agreement. In addition, as evidenced by the ORT's unsuccessful attempt in negotiation to obtain for employees of the telegraphers' class or craft the right to work such as here involved, by the existence of an established practice over the years supporting Carrier's action and by Carrier's decisions in other cases which were accepted by the ORT without question, Carrier has effectively shown that the point here at issue has heretofore been conceded by the ORT.

The Board, being without authority under the law to establish new rules or modify existing rules, which is what is here demanded, cannot on the record do other than hold that there has not been any violation of the Agreement in evidence and make a denial award.

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

Carrier, not having seen the ORT's submission, reserves the right, after doing so, to present such additional evidence in 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.