

Award No. 12163
Docket No. TE-10389

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 1, 1957 it required or permitted Road Foreman of Engines, D. N. Young, to copy Train Order No. 21 addressed to Train No. 153 while at or near Foremost, Georgia.

(2) Carrier shall compensate T. W. Moorhead, senior idle extra telegrapher a day's pay (eight hours) for the violation that occurred at Foremost, Georgia on February 1, 1957.

EMPLOYEES' STATEMENT OF FACTS: Foremost, Georgia is located on the Charlotte Division of this railroad. There are no positions regularly assigned to Foremost, Georgia.

On February 1, 1957, Road Foreman of Engines, D. N. Young, copied, recorded and delivered train order No. 21, addressed to C&E No. 153 at Foremost, Georgia. The train order was copied directly from the dispatcher by telephone. Train order No. 21 reads as follows:

FORM 21-A
(For Use Only in CTC Territory)
SOUTHERN RAILWAY SYSTEM
Order No. 21

TO C&E, Train No. 153
C&E, Engine No.

Date February 1, 1957

Block signals between at Foremost and
(if on two or more tracks, identify track to be used) Track No. 2
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 350 AM M.

JFY Chief Dispatcher
D. N. Young (Road Foreman Engines) Conductor or Engineman
Made Complete 333AM M.

MAIL THIS FORM TO CHIEF DISPATCHER WHEN FULFILLED

CONCLUSION

Carrier has proven, beyond any doubt, that there has not been any violation of the effective Telegraphers' Agreement, as alleged by the ORT, that the point here at issue has long since been conceded by the ORT, and that presenting the claim is nothing more than an effort by the ORT to create work for employees of the telegraphers' class or craft and establish a scheme under which the employees would profit at the expense of the Carrier. Further, that prosecution of the claim and demand is clearly part of a campaign by the ORT to obtain new rules and conditions of employment by an award of the Board.

The Board, being bound by law to interpret the contract, and being prevented from creating the make-work scheme here sought to be established by the ORT, is left with no alternative but to hold that the effective Telegraphers' Agreement was not violated and make a denial award. Any other decision would be contrary to the specific terms of the Agreement between the Carrier and its employees as represented by the ORT.

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 reply thereto.

(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.