

Award No. 12499
Docket No. TE-10886

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHATTANOOGA STATION COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chattanooga Station Company, that:

1. Carrier violated the Agreement between the parties when it required or permitted employees not covered by the Agreement to "OS" trains, transmit and/or receive messages and reports at Terminal Station, Chattanooga, Tennessee from October 14, 1957 through April 23, 1958.

2. Carrier shall compensate telegraphers idle on rest days in the amount of a day's pay, eight hours at time and one-half: A. N. Graves on each Sunday and Monday; L. W. Brown on each Tuesday and Wednesday; M. B. Johnson on each Thursday and Friday; and compensate A. N. Graves for three hours' overtime and L. W. Brown for five hours' overtime on each Saturday from October 14, 1957 through April 23, 1958.

EMPLOYEES' STATEMENT OF FACTS: The Agreements between the parties are available to your Board and by this reference are made a part hereof.

Respondent Carrier is engaged in the business of operating a passenger terminal in the city of Chattanooga, Tennessee for the purpose of handling the passenger trains and related business of the Southern, CNO&TP and AGS Railroads.

This Carrier maintained for many years in the Terminal Station a telegraph office furnishing continuous service around the clock, seven days per week. The work attached to the telegraphers' position in this office consisted of handling train orders, issuing clear cards, OS'ing trains, receiving lineups, transmitting and receiving messages, etc. Briefly, it is work necessary to the operation of the facility and work usually and normally performed by telegraphers.

it has not been handled as required by the effective agreement, the Railway Labor Act and Rules of Procedure of the Adjustment Board.

(b) The effective Telegraphers' Agreement has not been violated as alleged, and the claim and demand are not supported by it.

(c) Claim is a demand that the Board establish a new rule by an award. This the Board cannot do.

On the record, the claim and demand should be dismissed for want of jurisdiction. However, if, despite this fact, the Board assumes jurisdiction, it cannot do other than make a denial award.

OPINION OF BOARD: Carrier, a Company operating the Chattanooga railroad station used to employ telegraphers twenty-four hours around the clock, seven days a week. It abolished one shift and rearranged the remaining two, leaving its telegraph office unprotected between 12 P. M. and 5 A. M. and between 1 P. M. and 3 P. M. each day. This claim involves the right of the Carrier to assign or permit employes not covered by the Telegraphers' Agreement to do work formerly done by the furloughed telegrapher.

Carrier states that the claim is barred and should be dismissed for lack of jurisdiction in that no conference was had as required by the Railway Labor Act and the Rules of Procedure of the National Railroad Adjustment Board. We have previously held that a conference is essential to confer jurisdiction upon this Board. Awards 10852, 10939, 11136, 11484.

The facts, briefly, are that a conference was held with Superintendent Pratt at the first step in the grievance procedure. When this resulted in no agreement, the claim was presented to S. M. Percival, assistant to the President, the highest officer of the Carrier designated to handle claims. He denied the claim. The record indicates that no request was made for a conference with Percival, and no conference was held with him.

The question is whether the conference required by the Act must be at the highest level or can it be at the lowest level.

The Act does not specify when a conference must be held. It merely requires that it be held. Petitioner urges that the conference with Pratt be deemed sufficient. We disagree. If the requirement that a conference be held is so serious that it is deemed jurisdictional, the conference intended must have been that which is had at the highest level. The purpose of the Railway Labor Act, Section 2 Second, was to encourage the confrontation of representatives of both sides as the best way to get agreement. It was intended by the Act and by Board decision that a serious effort be made to settle the claim by a conference before submission to this Board. This serious effort is not satisfied by a conference at the first level, between the Carrier representative who initiated the action which gave rise to the claim, and the local union representative. Of necessity, the serious effort must be at the top if it is to be meaningful.

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 Employes involved in this dispute are respectively Carrier and Employes 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 facts of record here do not show that this matter has been properly progressed to the Board.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 21st day of May 1964.