

Award No. 12624
Docket No. TE-13633

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY

(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines), that:

R. E. Matheny, Agent-Telegrapher, Luning, Nevada, and D. D. Terry, Telegrapher-PMO, Sparks, Nevada, are entitled to a "call" of two (2) hours at the overtime rate for June 14 and July 13, 1956, account Section Foreman Manfredi, an employe not covered by the parties' Agreement at Luning, Nevada, transmitted a message of record over the telephone to a clerk, also an employe not covered by the parties' Agreement in the Roadmaster's Office, at Sparks, Nevada, outside the assigned hours of said Agent-Telegrapher.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective December 1, 1944 (reprinted March 1, 1951), and as amended.

At page 50 of said agreement are listed the positions existing at Luning and Sparks, Nevada, the locale of the disputes involved in the claims, the subject matter of this appeal, on the effective date of said agreement. For your Board's ready reference, we quote the listings below:

Location	Title of Position	Hourly Rate of Pay
Luning	Agent-Telegrapher	\$1.885
Sparks	Agent	2.04
	Manager-1st Wire Chief	1.92
	2nd Wire Chief-Telegrapher	1.86
	3rd Wire Chief-Telegrapher	1.86
	1st Telegrapher-Clerk-PMO	1.77
	2nd Telegrapher-Clerk-PMO	1.77
	3rd Telegrapher-Clerk-PMO	1.77

the current agreement. Not only is the practice entirely proper, but Petitioner has never produced one shred of evidence as to any agreement having been entered into by the Carrier, allocating the duties in dispute to employees represented by Petitioner.

With respect to claims for a "special call" at overtime rate, in this Docket, and insofar as any claim for overtime rate is concerned, if there were any basis for claim submitted, which Carrier denies, nevertheless, the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of awards of this Division, the latest being 6750 (on this property), 6873, 6875, 6974, 6978, 6998, 7030, 7062, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293, 7316, 8114, 8115, 8531, 8533, 8534, 8568, 8766, 8771, 8776, 9748 and 9749.

CONCLUSION

Carrier has conclusively shown herein the claim is unwarranted and totally lacking in merit, and if not dismissed for lack of proper notice to other interested parties, Carrier asks that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: A Section Foreman telephoned the following information to a Clerk in the Roadmaster's office at Sparks.

"Weekly report. Total 126 hours. Removing weeds 72 hours. Lamp 8 hours. Janitor 6 hours. Balance ordinary track repairs."

This is not a communication of record. It has nothing to do with the operation of trains or with the safety of passengers and property. There is no probative evidence in the record that this type of communication is work which belongs exclusively to employees covered in the Telegraphers' Agreement. For these reasons there is no merit to the claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June 1964.