

**Award No. 12643**  
**Docket No. TE-13387**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Lee R. West, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**  
**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-San Francisco Railway, that:

1. Carrier violated its agreement with the employes represented by The Order of Railroad Telegraphers when at 7:25 P.M., May 5, 1961, it caused, required or permitted a clerk at Aurora, Missouri, to perform the work of a telegrapher at Aurora, a station at which a telegrapher is employed but who was not on duty.

2. Carrier shall now compensate Mr. H. A. Atwell, Agent-Telegrapher, Aurora, an amount equivalent to one two-hour call under the Agreement, a total of \$8.31.

**EMPLOYES' STATEMENT OF FACTS:** The current Agreement between the parties provides the following:

**"ARTICLE I.**

(1) Employes, except train dispatchers, who are required by direction of officer in charge to handle train orders, block or report trains, receive or forward written messages by telegraph, telephone or mechanical telegraph machines (defined as telegraphers, telephone operators, block operators, operators of mechanical telegraph machines, agent-telegraphers, agent-telephoners), agents, assistant agents, ticket agents, assistant ticket agents and car distributors, listed in appended wage scale, also tower and train directors, tower-men, levermen, staffmen, are covered by this Agreement and are hereinafter collectively referred to as employes, and when so referred to, all are included."

The following Agreement is also currently in effect:

fied the Organization on August 28, 1961, that it had been unable to locate any record of the alleged written message. See Carrier's Exhibit A-4.

In conclusion, the Carrier has shown that the reported communication between the clerical employe and the train dispatcher, if anything, was nothing more than conversation, was not a receipt or forwarding of a written message, and for any and all reasons outlined herein, the claim of the Employes is without merit or Agreement support, and the Carrier requests the Board to deny the claim in its entirety.

(Exhibits not reproduced.)

**OPINION OF BOARD:** In support of the claim made herein, the Organization alleges that on May 5, 1961, the Yard Clerk at Aurora, Missouri, telephoned the Train Dispatcher at Springfield, and transmitted the following message:

"We have 4 cars for No. 31 and there may be more later when switcher comes in. We have 4 loads and 3 empties for No. 36."

They then contend that such work is reserved to the telegraphers under their Scope Rule:

The Carrier denies that such communication occurred as alleged and denies that the agreement has been violated.

The Organization asserts that such clerk was questioned by a telegrapher who overheard the entire transaction. However, no statement or other evidence of such telegrapher is included in the record. In fact, no evidence of any kind is offered in support of the alleged act. Inasmuch as the Organization had the burden of proving alleged acts which are denied, their failure to do so is cause for denying 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 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 Agreement has not been violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1964.