

Award No. 12701
Docket No. TE-11116

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, 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:

CASE NO. 1

1. Carrier violated the Telegraphers' Agreement when on the 8th day of November 1957, it required, caused or permitted M of W Foreman C. D. Campbell, an employe not covered by the Telegraphers' Agreement, to perform the work of transmitting communications of record by telephone at Seneca, South Carolina after the agent-telegrapher was off duty.

2. Carrier shall compensate B. H. Walker, agent-telegrapher, Seneca, South Carolina, for one call (two hours and forty minutes) at time and one-half rate (regular rate \$2.3950 per hour) for the violation set forth above. Total amount \$9.58.

CASE NO. 2

1. Carrier violated the Scope Rule (Rule 1) and the Seniority Rule (Rule 18) of the Telegraphers' Agreement when on November 18, 1957 it caused, required or permitted M of W Foreman H. O. McDonald, an employe not covered by the Telegraphers' Agreement, to perform the work of transmitting communications of record by telephone at Easley, South Carolina after the agent-telegrapher was off duty.

2. Carrier shall compensate Relief Telegrapher J. G. Black for one call (two hours and forty minutes) at time and one-half rate (regular rate is \$2.32 per hour) for the violation set forth herein. Total amount of this claim is \$9.28. Further, for any subsequent violations as mentioned herein, the Carrier shall compensate J. G. Black or T. T. Whitten, employes working the agent-telegrapher's position Easley, South Carolina date violation is permitted, by payment of one call at the rate of pay of the position.

The second approach which the ORT makes involves its allegation that the maintenance of way foreman and assistant track supervisor, when using the wayside telephones in wayside telephone booths, transmitted so-called messages of record to the telegraph offices at Greenville and Atlanta from the wayside telephone booths. Thus, while the ORT argues that so-called messages of record were sent from wayside telephones in wayside telephone booths, it argues at the same time that the so-called messages of record could be sent only from offices at Seneca and Easley. The ORT has not, on any occasion, contended that the claimants should have gone to the wayside telephones in wayside telephone booths for the purpose of telephoning the information to communications offices in Charlotte, Greenville or Atlanta. It argues to the contrary. The ORT contends that the information should have been brought to the offices at Seneca and Easley and should have been telephoned from those offices either to Greenville, Atlanta or Charlotte. These facts clearly demonstrate the absurdity of the claims and demands here made by the ORT.

When the information was received in the communications offices in Greenville and Atlanta from the foreman and assistant track supervisor, it was then converted into so-called messages and transmitted by teletype to Charlotte and Washington. Employees of the telegraphers' class or craft operated the teletype machines used in sending and receiving the messages, but on no occasion did they use the telephone in doing so.

While employees of the telegraphers' class or craft operate teletype machines installed in telegraph (communications) offices, no provision in the Telegraphers' Agreement confers upon them any contract right to transmit, receive or otherwise handle so-called messages of record.

When the maintenance of way foreman and the assistant track supervisor used the wayside telephones in the wayside telephone booths in talking to the telegraphers on duty in the communications offices in Greenville and Atlanta, they simply had ordinary telephone conversations in connection with the conduct of the Carrier's business. They were doing so in line with the practice from time immemorial—a practice recognized by the telegraphers and their representatives. Thus the conclusion is inescapable that there was no violation of the effective Telegraphers' Agreement on either date involved in the claims and demands, and there is no basis for the monetary demands here made.

The claims and demands being absurdities, and designed to do nothing more than "make work" for employees of the telegraphers' class or craft and being without basis under the plain, unambiguous language of the agreement in evidence, the Board cannot do other than make a denial award.

OPINION OF BOARD: The claims allege a violation of the effective Telegraphers' Agreement because in one instance, a Maintenance of Way Foreman, and in another, an Assistant Track Supervisor used wayside telephones located in booths on Carrier's right of way to orally request telegraphers to transmit certain detailed information to Carrier's officers relating to the progress of the work performed.

The Carrier contends and supports a long established practice under which Maintenance of Way department supervisors and foremen have used wayside telephones in transmitting to officers the daily progress of maintenance work under their supervision. The record shows, moreover, that neither the foreman nor the assistant track supervisor was at or near a telegraph or telephone office near the locations where the wayside telephones were situated.

It has, therefore, not been proved that the work belonged exclusively to telegraphers by tradition, custom and practice. The absence of such a showing, given the general Scope Rule which is contained in the applicable Agreement, requires rejection of the claim (Award 12118).

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 2nd day of July 1964.