

Award No. 12761
Docket No. TE-10991

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
GULF, MOBILE AND OHIO RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad, that:

1. Carrier violated the agreement between the parties when, on February 7, 1958, it required or permitted an official, not covered by the agreement, to handle a train order at Kahlmus, Alabama.

2. Carrier shall compensate O. B. Adams, senior idle telegrapher, in the amount of a day's pay.

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

Kahlmus, Alabama, is a station on the Southern Division of this Carrier's line several miles north of Tuscaloosa, Alabama. There are no positions under the agreement at Kahlmus. On February 7, 1958, the train dispatcher at Tuscaloosa issued the following train order:

"Order No. 63

February 7, 1958

C&E Extra 748 North at Tuscaloosa

C&E No. 130 at Tuscaloosa

C&E Work Extra 753 at Kahlmus care of CJP

Extra 748 North wait at Northport until 420 four twenty P.M. for Work Extra 753.

No. 130 wait at Tuscaloosa until 520 five twenty P.M. for Work Extra 753.

HOL

Made Complete 2:24 P.M.

Peterman Operator."

The above train order was addressed to and delivered to Extra 748 North and No. 130 at Tuscaloosa. It was addressed to Work Extra 753 at Kahlmus in care of CJP. CJP are the initials of Mr. C. J. Pennebaker, Trainmaster. For some reason, Mr. Pennebaker was not available, and the order was given

62 miles in order to hand the train order to the crew. The claimant was a regularly assigned employe, and Rule 9 provides that regularly assigned employes will not be required to perform service on other than their regularly assigned positions, except in case of emergency. There is no emergency involved in the instant case. There is no practical or contractual reason why the claimant should have personally delivered the train order. To have required him to do so would have contributed nothing whatsoever to safety, efficiency or economy. To use a telegraph operator in such a way would only result in an unnecessary waste of revenue and manpower. Because of the impracticality of using a telegrapher to transport a train order in a manner similar to circumstances here, the contract never contemplated such an arrangement. Because of the impracticality of using the claimant under the circumstances, it is likewise true that the contract does not contemplate payment for no services performed. The contract was negotiated by prudent and practical railroad men and was not designed to create commitments which are contrary to good railroading or to require windfall payments, such as requested here.

CONCLUSION

The Agreement specifically provides in Rule 9 that "regularly assigned employes will not be required to perform service on other than their regularly assigned positions, except in case of emergency * * *." The claimant in this case was a regularly assigned employe at Artesia, Mississippi. There was no emergency involved. Obviously the intent of this provision of the Agreement was because a regularly assigned employe did not want to leave his regular job except in emergencies. As a practical matter, it would have been impossible, without unnecessary delay to the train, to find Mr. Adams at Artesia and have him go to Kahlmus as a messenger with a train order for the crew of the work train. The arrangement here complained of was the most efficient, economical and satisfactory manner of moving the train and is only what prudent men would do under the circumstances. The claim is not supported by the Agreement, past custom and practice, and is contrary to the efficient and economical operation of the railroad.

Carrier requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim involves the handling of train orders at a location where telegraphers covered by the Agreement are not employed. Awards 8207, 11331 and 11989 involved the same issues between the same parties. Those Awards are not palpably erroneous and are dispositive of the claim herein, which will be denied.

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 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 17th day of July 1964.