

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:

Carrier violated the Agreement between the parties when it required or permitted employes not covered by the Agreement to handle train orders as follows:

1. (a) On August 7, 1959 at Elton, Mississippi, a conductor handled (received, copied and delivered) Train Order No. 25.
(b) Carrier shall compensate A. E. Plunk, senior idle telegrapher, in the amount of a day's pay (8 hours).
2. (a) On February 15, 1960 at Dancy, Mississippi, a conductor handled (received, copied and delivered) Train Order No. 43.
(b) Carrier shall compensate extra telegrapher T. G. Walton in the amount of a day's pay (8 hours).
3. (a) On March 21, 1960 at Mantee, Mississippi, a conductor handled (received, copied and delivered) Train Order No. 26.
(b) Carrier shall compensate extra telegrapher Bill Kennedy, Jr. in the amount of a day's pay (8 hours).
4. (a) On March 23, 1960 at Mantee, Mississippi, a conductor handled (received, copied and delivered) Train Order No. 30.
(b) Carrier shall compensate extra telegrapher Bill Kennedy, Jr. in the amount of a day's pay (8 hours).
5. (a) On April 7, 1960 at Jeff, Mississippi, a conductor handled (received, copied and delivered) Train Order No. 30.
(b) Carrier shall compensate extra telegrapher J. M. Ferguson in the amount of a day's pay (8 hours).

question raised here was considered by this Division in Award 408. In that case, the factual situation was similar to the one before us, and while the agreement was between . . . , the language of the rule involved was identical to Rule 48 in every material respect. . . . Since Award 408 is squarely on point and is the only prior decision of the Division which has interpreted the rule under similar circumstances, it should be followed in this case."

This same principle was expressed by Referee Coburn in Award 8458, *ORT vs. DL&W*, decided September 16, 1958. The Award stated:

"We find and hold that Awards 4768 and 4769 are controlling here. The issue involved in those cases is the same one we are asked to re-adjudicate now. The Board, as a matter of law and sound public policy, ought to adhere to the rule of *res judicata*. The law declares 'The awards of the several divisions of the Adjustment Board . . . shall be final and binding upon both parties to the dispute. . . .' (Section 3, First (m).) This Board itself in Award 6935 (Referee Coffey), enunciated this sound policy when it said:

'If, as we maintain, our awards are final and binding, there must be an end sometime to one and the same dispute or we settle nothing, and invite endless controversy instead. The pending claims, having been once adjudicated, are now barred from further Board consideration, and must be denied on jurisdictional grounds.'

Following these well established principles enumerated in prior decisions of this Board, the instant claim should be denied.

CONCLUSION

The Organization has previously attempted to have the agreement between the parties enlarged to such an extent that it would justify claims such as here presented. Being unsuccessful in such attempts, the Organization is attempting to have this Board write into the agreement by contract construction, language that the parties themselves have in past instances carefully considered and purposely rejected. This Board has in innumerable cases, including decisions affecting the parties here, held that the scope and train order rules of prior agreements containing identical language to the current agreement do not support the claim. The precise issues presented in this case have previously been passed upon by this Board and this Board should uphold its prior decisions lest the parties be in utter confusion as to their responsibilities.

The claim here presented is contrary to the agreement and is unreasonable as to practical railroad operations and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The claims herein involve the same parties and same issues as involved in Award 12761. For the reasons stated in that Award, the claims herein will also be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 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.