

Award No. 13324

Docket No. TE-14038

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk and Western Railway, that:

1. Carrier violated and continues to violate the terms of an agreement between the parties hereto when on April 1, 1962, it declared abolished the position of Agent at South Norfolk, Virginia, and transferred the work thereof to employees not covered by the Telegraphers' Agreement at Norfolk, Virginia Freight Station.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate L. R. Herring, former occupant of the nominally abolished Agent's position at South Norfolk, Virginia, for any wage loss sustained commencing April 1, 1962, and for each day thereafter so long as the violation complained of continues.

3. Carrier shall, in addition to the foregoing, reimburse Agent L. R. Herring for all necessary expenses while used away from his regular assignment at South Norfolk, Virginia, in accordance with the provisions of Rule 21 (a) of the parties' Agreement.

4. Carrier shall restore the Agent's position at South Norfolk, Virginia, by returning the work thereto.

EMPLOYEES' STATEMENT OF FACTS: The petitioner, representing the employees in the Telegraphers' class on this property, is the Order of Railroad Telegraphers and will hereinafter be referred to as Employees or ORT.

The Norfolk & Western Railway Company is the respondent and will hereinafter be referred to as Carrier.

There is in evidence an agreement by and between the parties to this dispute, effective February 16, 1958, and as otherwise amended. Copies of said agreement are, pursuant to the provision of law, assumed to be on file with your Board, and are by this reference made a part hereof.

OPINION OF BOARD: The case involves the same parties, the same Agreement and the same issues as in Award No. 13323. For the reasons stated in Award No. 13323, we will deny the Claim.

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

**Award Number 13324
Docket Number TE-14038**

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 25th day of February 1965.

DISSENT TO AWARDS 13323 and 13324,
DOCKETS TE-12140 AND TE-14038

In my opinion these awards are erroneous, and I am therefore compelled to dissent.

The first error is failure of the majority to recognize that work covered by the telegraphers' agreement consists of many things in addition to "telegrapher duties" as that term is employed in the Opinion of Board in Award 13323. Obviously, little consideration was given to my dissertation on the duties of a station agent and the resulting right of such employes to perform those duties regardless of whether "telegrapher duties" are also required, even though my views were not disputed.

Further error is made manifest by failure to recognize the unique nature of the scope rule of this particular agreement, which clearly relates the coverage to positions listed in the wage scale, "... irrespective of title by which designated or character of service performed." If the quoted language does not reserve to the employes covered the work of the positions listed—regardless of the character of service performed—as long as the work remains, then the parties were entitled to be told why.

Instead, the majority merely relies on Award 5803 which, aside from being erroneous itself, did not deal with a scope rule such as we have here. The result is two more erroneous awards, and I dissent.

J. W. WHITEHOUSE
Labor Member