

Award No. 13343
Docket No. TE-13735

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Ross Hutchins, 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 System that:

1. Carrier violated the Telegraphers' Agreement when on Saturday, December 31, 1960, and Sunday, January 1, 1961, and continuing on subsequent Saturdays and Sundays thereafter, it caused, required and permitted train service employes, not covered by the Telegraphers' Agreement, to carry train order No. 427 from Huntingburg, Indiana and train order No. 447 from Youngtown, Kentucky, respectively, to Evansville, Indiana, and after arriving at Evansville, Indiana, on these respective dates, place such orders on train register or hold in their possession for delivery to the Conductor and Engineer of a train not due to leave Evansville, Indiana until the following day, January 1, 1961 and January 2, 1961, and refused to use regular assigned Clerk-Telegrapher C. L. Oskins for this service on his assigned rest days when he was available and ready for a call on these respective dates.

2. Carrier shall compensate regular assigned Clerk-Telegrapher C. L. Oskins, Evansville, Indiana, for one (1) call (two hours and forty minutes) at time and one-half times the Evansville, Indiana Clerk Telegrapher pro rata rate for Saturday, December 31, 1960 and one (1) call (three hours) at time and one-half times the Evansville, Indiana Clerk-Telegrapher pro rata rate for Sunday, January 1, 1961, and for each subsequent Saturday and Sunday thereafter in which this violation continues, Evansville, Indiana pro rata rate \$2.4450 per hour, time and one-half rate \$3.67 per hour, total for two (2) calls \$20.79.

3. Further, Carrier shall be required to permit joint check of records to ascertain dates when such subsequent violations occurred.

EMPLOYES' STATEMENT OF FACTS: Evansville, Indiana, is located on the St. Louis-Louisville Division of this Carrier. At Evansville, Indiana, the Carrier has negotiated a position of Clerk-Telegrapher and the regular

First, it is carrier's position that the individual claim for December 31, 1960 and January 1, 1961, predicated on two alleged violations involving specified circumstances and persons, is entirely groundless and unsupported by any provision of the effective agreement, for reasons set forth in parts I through IV hereof, and that therefore it cannot per se serve as the progenitor of any valid monetary claims in behalf of Mr. Oskins for unspecified undescribed "violations" on an indefinite number of unnamed subsequent Saturdays and Sundays.

Second, the ORT does not even assert that "this violation" did occur on subsequent Saturdays and Sundays, but demands that carrier permit joint check of records to ascertain dates when it may have occurred. This demand of petitioner is in itself the strongest kind of evidence that the claim is not properly or in fact "continuing", i.e., not based on the regular repetition of the same occurrence or situation as clearly contemplated by the language in Section 3, Article V. Carrier is not obligated to assist a labor organization in developing or enlarging a penalty claim as here involved.

St. Louis Division Time Table No. 93, then in effect, contained the following under Special Instructions: "Train No. 83 will leave Evansville on time table rights without clearance card." Thus, Train No. 83 normally and regularly left Evansville without a clearance card or train orders.

Carrier respectfully submits that the only claim before the Board is for December 31, 1960 and January 1, 1961, and that any similar claims for unnamed subsequent dates are barred by reason of non-compliance with Section 1 (a), Article V of the August 21, 1954 Agreement, which reads in part as follows:

"All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

The evidence of record does not support petitioner's contention that the agreement was violated, nor does it support the claim for pay. For the reasons set forth herein, the claim should be denied in its entirety, and carrier respectfully requests that the Board so decide.

(Exhibits not reproduced.)

OPINION OF BOARD: In this matter a train crew operates a train from point "A" to point "B" and returns to point "A". However, they arrive at point "A" at 5:00 A.M. on one day and depart point "A" at 12:35 A.M. on the following day.

Train Orders were issued before arriving at "A" for use the following day on the trip from "A" to "B". Upon arrival the crew pinned the orders to the train register or carried them in their possession until they left the next morning.

The Telegrapher at "A" makes claim for a call.

The Awards agree that the phrase "to handle train orders contemplates receiving, copying and delivering them to train crews which are to execute them."

The following awards are cited as controlling in this docket. Third Division 12240 - Coburn; 13160 - Zack; 13152 - McGovern; 11807 - O'Gallagher; 11788 - Dorsey; 11822 - Christian; 11653 - Hall and 10228 - McDermott.

Established in Awards 13341 and 13342 is the following:

"Where the same crew continuously operates the same power units there is no 'handling' of train orders where only the train's designation changes because of reversing directions. See Awards 4819 and 10418 of the Third Division."

But in this docket we do have a different train. This docket does not involve a continuous operation.

The proof sustains a recovery for December 31, 1960 and January 1, 1961 but no recovery can be had for any other date.

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 the Agreement has been violated.

AWARD

Claim sustained for December 31, 1960 and January 1, 1961, but for no other dates.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.