

Award No. 13500
Docket No. TE-12854

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
WABASH RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railroad, that:

1. Carrier violated the provisions of the Agreement between the parties when on October 17, 1960, it required or permitted an employe not covered by the scope of the Agreement, a track supervisor, to receive and transmit messages directly to and from a train dispatcher, on the latter's telephone line, at Cairo, Missouri, and;
2. As a consequence of the violation, Carrier shall compensate M. L. Harlan, senior idle extra telegrapher, a day's pay, eight (8) hours at pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective September 1, 1955, and as otherwise amended.

The circumstance which brought about the claim was created when, at about 10:29 A. M. on Monday, October 17, 1960, Track Supervisor Watkins, an employe not covered by the scope of the Telegraphers' Agreement, communicated with the train dispatcher over his wire as follows:

"Track Supervisor	—	This is Jim up at Cairo. When are they going to run that Local?
Dispatcher	—	Do you want me to get time slipped for giving you a lineup? You know that costs \$7.20.
Track Supervisor	—	Well — we got that big tank just about ready to turn over.
Dispatcher	—	Well — He is called for 10 A. M. Now, who is going to pay the time slip.

regarding the work of receiving or copying of train line-ups or receiving or forwarding of "communications of record." See Award No. 4439, wherein this Division stated:

"In determining the rights of the parties it is our duty to interpret the applicable rules of the parties' Agreement as they are written. It is not our privilege or right to add thereto, and when a rule specifically lists the situations to which applicable it thereby excludes all those not included therein."

Article V of the Amendments to the Constitution of the United States includes the following guarantee: "No person shall be * * * deprived of life, liberty or property without due process of law; * * *."

The Congress of the United States has in the exercise of the powers granted by Article 1, Section 1 and 8 (3) and 18 of that Constitution enacted the Railway Labor Act to provide for and govern collective bargaining relationships in the railroad industry.

The Railway Labor Act provides definite procedures for the handling of requests for changes in existing agreements relating to rates of pay and working conditions, see Section 6, Section 5 (a), and Section 7 and 10 of that Act.

The Adjustment Board with its various divisions provided for in Section 8 of that Act is established for the limited and specific purposes provided for in Section 3, i.e., to consider and decide disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions. This Board has no authority to add to or change or eliminate any rules of existing agreements or to place the Carrier in any position other than that in which it has placed itself by collective bargaining agreement.

The Carrier and its employees represented by The Order of Railroad Telegraphers have not by agreement provided that only telegraphers may furnish information by telephone which the Train Dispatcher needed in order to issue a message cautioning a train to approach a given point with caution and to proceed on hand signal nor have they agreed that an extra telegrapher will be paid eight (8) hours when other than a telegrapher receives or copies a train line-up or receives or forwards a "communication of record."

In order to sustain this claim this Board must ignore the bounds of its authority and the processes provided by law for the progressing of changes in agreements relating to rates of pay and working conditions for railroad employees and thereby deprive the persons who own this company of property without due process of law.

This Board has no jurisdiction to supply that which the parties' agreement does not contain.

The claim should be dismissed, and if not dismissed, denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner contends that the Carrier violated the Agreement when it allowed a Track Supervisor to call a train dispatcher and discuss track conditions with him. There was a possibility that the track might block the progress of the train. Under such conditions, it must be reported immediately.

"GENERAL RULES.

F. Accidents, defects in track, bridges, signals, or any unusual conditions which may affect the movement of trains, must be promptly reported by quickest means of communication to the proper authority."

We find that this was an unusual condition which necessitated the call for the safe operation of trains on the railroad.

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 of the parties 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 29th day of April 1965.