

Award No. 13503
Docket No. TE-12870

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 Agreement when it required or permitted an employe not covered thereby to perform communication service of record by the use of the telephone on October 9, 1960, at Green Top, Missouri.

2. Carrier shall now be required to compensate G. Hackett, regularly assigned Agent-Telegrapher at Green Top, Missouri, on the basis of a "call" for the work denied him due to this violation.

EMPLOYES' 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.

At page 32 of said Agreement there is listed a position of Agent-Telegrapher at Green Top, Missouri, to which position Agent-Telegrapher Grover Hackett was regularly assigned on the date of claim. The work week of the position involved is Monday through Friday, with rest days of Saturday and Sunday. Mr. Hackett's assigned work hours are 6:00 A. M. to 3:00 P. M., with one hour lunch period.

The situation which gave rise to the claim is shown following, as presented by District Chairman Hannah, on page 2 of his claim letter of October 21, 1960, to Chief Dispatcher O'Connor:

"The following communication of record took place over the Dispatchers' Telephone between R. R. McAtee, Road Foreman of Engines, at Green Top, Missouri, and Jim Thornburg, Train Dispatcher, at Moberly, Missouri, on Sunday, October 9th, at 10:45 A. M.

McAtee: McAtee at Green Top.

Dispatcher: Yes, Bob.

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.

This Carrier and its employees represented by The Order of Railroad Telegraphers have not by agreement provided that only telegraphers may transmit "communications of record" by telephone nor have they agreed that a telegrapher will be paid a "call" as provided in Rule 5 of the telegraphers' agreement when other than telegraphers transmit "communications of record" by telephone.

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 information was a communication of record and that communications of record are reserved to them by the Scope Rule of the Agreement.

The issue is whether or not this work is reserved to telegraphers under the Agreement. Award 4516 and many others have so held. In recent years the Board has been holding that under a general Scope Rule the issue is determined by past practice on the property. Award 11401 on this same property, this Board held:

"Under Scope Rules, similar to the one we have here, there are many awards of this Board to the effect that the Claimant's right to the work which he contends belongs exclusively to him must be resolved from consideration of tradition, historical practice and custom and the burden rests upon the Claimant to prove his case."

on this same property this award was followed by Award 11671. Also Award 11592 followed this holding wherein the Board stated:

"A considerable number of cases involving the question of Telegraphers' exclusive right to handle lineups have been handled by this Board. The holdings have not been consistent. The more recent — and more persuasive, in our judgment — awards have held that in interpreting a general scope rule which merely lists positions or titles, guidance must be obtained from a consideration of custom, tradition and practice on the property (see Awards 10970, 10951, 10918, 10604, 10581, 10493 and others). In other words, there is no presumption of exclusivity — at least in certain areas — based merely on the listing of a job title and the fact that the employee possessing that title has performed the work in question. In a contested case such as this, the question must be asked: Did Claimants, by tradition, custom and practice on this property, perform the work to the exclusion of others?"

Award 12356 also followed the same line of reasoning. We believe the later line of awards should be followed, and so we hold that the Claimant's right to the work must be resolved by the tradition, practice and custom on the property. Therefore, since there is no showing of past practice on the property the claim must be denied. The Opinion herein is confined to this Carrier.

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 29th day of April 1965.