

Award No. 13506
Docket No. TE-13114

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 terms of the Agreement, when and because it required or permitted a Track Supervisor, on Monday, January 30, 1961, at Sturgeon, Missouri, to request and receive a lineup over the Train Dispatcher's telephone, at a time when the Agent-Telegrapher assigned thereto was off duty, but available for such service.

2. Carrier shall compensate Mr. C. L. Hill, regularly assigned Agent-Telegrapher at Sturgeon, Missouri, a "call" (three hours' pay) due to Carrier's violative action which deprived him of work to which entitled.

EMPLOYEES' STATEMENT OF FACTS: This is a "lineup" dispute. Mr. C. L. Hill, Claimant, is the regularly assigned Agent-Telegrapher at Sturgeon, Missouri, assigned Monday through Friday from 7:50 A.M. to 4:50 P.M., with an intervening one-hour lunch period. The incident causing the violation charge occurred after his working hours.

On January 30, 1961, "at about 16:14 P.M., Track Supervisor Gregory called the Train Dispatcher over the Dispatcher's phone to learn the whereabouts of Train Nos. 209 and 212." The quoted portion of the preceding sentence is taken from Mr. Johnson's letter of May 9, 1961, to General Chairman Walker, which statement made by Mr. Johnson is shown here as evidence that the facts which occasioned the charge of Agreement violation are not in dispute. Full text of said letter reproduced hereinafter as ORT Exhibit No. 5.

The incident of communication between the Train Dispatcher and Track Supervisor, involving the Telegrapher at Clark, Missouri, is as stated following:

"Track Supervisor: Dispatcher Sturgeon.

Dispatcher: Rings Clark, Mo. (instead of answering him).

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

The claim should be dismissed, 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 belong 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 employe 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.