

**Award No. 13507  
Docket No. TE-13150**

**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 parties' Agreement when, on December 22, 1960, it required or permitted employees not covered thereunder to perform work of telegraphers at Logansport and Peru, Indiana.

2. Carrier shall be required to pay a "call" (3 hours' pay) to each; W. K. Martin, Agent-Telegrapher at Logansport; and J. A. Bolner, Telegrapher at Peru.

**EMPLOYEES' STATEMENT OF FACTS:** The facts of the incident which occasioned the charge of Agreement violation and resultant claim can best be shown by reproduction of the body of the appeal letter sent to Mr. F. A. Johnson, Manager of Personnel, by General Chairman H. R. Walker, on April 10, 1961:

"Claim has been presented to Mr. F. C. Flynn, Superintendent, Montpelier, Ohio declined by him and is herewith submitted to you for settlement.

Carrier violated the Agreement when on Thursday, the 22nd of December 1960 it caused, required and permitted Clerk Jack Wally at Logansport, Indiana and Clerk Jim Wahling at Peru, Indiana to perform work of telegrapher at Logansport and Peru.

Carrier shall compensate W. K. Martin, Agent-Telegrapher, Logansport, one call, three (3) hours at straight time rate of \$2.73 per hour. Total amount of claim \$8.19.

Carrier shall compensate J. A. Bolner, Telegrapher, Peru, Indiana, one call, three (3) hours at straight time rate of \$2.63 per hour. Total amount of claim \$7.89.

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 Sections 7 and 10 of that Act.

The Adjustment Board with its various divisions provided for in Section 3 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 or working conditions. This Board has no authority to add to or change or eliminate any rules of existing agreements or to place the parties in any position other than that in which they have placed themselves 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 transmit or receive "messages or reports of record" by telephone nor have they agreed that a telegrapher will be paid a "call" as provide in Rule 5 of the telegraphers' agreement when other than telegraphers transmit or receive "messages or reports of record" by telephone and when Claimant Bolner is on duty and under pay at the time for which claim for call is made.

In order to sustain this claim this Board not only must ignore the facts presented in connection with the occurrence involved but also the bounds of its authority and 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 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.