

Award No. 13508
Docket No. TE-13283

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:

CLAIM NO 1

1. The Carrier violated the terms of an Agreement between the parties hereto when on February 15, 1961, it permitted or required Footboard Yardmaster Joe Hayes, an employe not covered by said Agreement at Lafayette, Indiana, to perform the work of a Telegrapher.

2. The Carrier shall, because of the violation set out in Paragraph 1 hereof, compensate Telegrapher R. L. Grauel, who was available to perform the work, a Call in accordance with the provisions of Rule 5 (b).

CLAIM NO. 2

1. The Carrier violated the terms of an Agreement between the parties hereto when on February 24, 1961, it permitted or required Clerk Reid, an employe not covered by said Agreement at Lafayette, Indiana, to perform the work of a Telegrapher.

2. The Carrier shall, because of the violation set out in Paragraph 1 hereof, compensate Telegrapher J. L. Peters, who was available to perform the work, a Call in accordance with the provisions of Rule 5 (b).

CLAIM NO. 3

1. The Carrier violated the terms of an Agreement between the parties hereto when on March 9, 1961, it permitted or required Clerk Brooks, an employe not covered by said Agreement at Lafayette, Indiana, to perform the work of a Telegrapher.

2. The Carrier shall, because of the violation set out in Paragraph 1 hereof, compensate Telegrapher R. L. Grauel, who was available to perform the work, a Call in accordance with the provisions of Rule 5 (b).

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective September 1, 1955, and as amended.

At page 26 of this Agreement are listed the positions at Lafayette, Indiana, the locale of these disputes, on the effective date of said Agreement. The listing reads:

MONTPELIER DIVISION

Telegraphers

Location	Title	Rate Per Hour
Lafayette	1st T	\$1.85½
	2nd T	1.85½

In an Agreement between these same parties, effective November 1, 1946, at page 21, the position listing for Lafayette is as follows:

MONTPELIER DIVISION

Telegraphers

Location	Title	Rate Per Hour
Lafayette	1st T	\$1.08½
	2nd T	1.08½
	3rd T	1.08½

On a date not shown in the record the Carrier discontinued the third shift telegrapher's position at Lafayette; and thereafter rearranged the hours of service at Lafayette as follows:

First Shift	— 6:30 A. M. to 2:30 P. M.
Second Shift	— 6:30 P. M. to 2:30 A. M.

GENERAL FACTS

The following are general facts applicable to the three claims incorporated into this submission.

Lafayette, Indiana is located on the Second District of the Carrier's Montpelier Division. This office is under the supervision of the Assistant Superintendent located at Peru, Indiana. Peru is also the train dispatching office for this Division.

The Carrier's facilities at Lafayette, insofar as pertinent here, consists of a freight office and a passenger station, located approximately one block apart. The telegraph and train order office is located in the passenger station. Company and commercial telephones are located both in the passenger station and the freight house. In addition, company telephones are located in the yard at various points.

or reports of record" by telephone and when Claimant Grauel in Claim No. 1 is on duty and under pay at the time for which claim for call is made.

In order to sustain these claims this Board not only must ignore the facts presented in connection with the occurrences 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 employes 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 claims 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 line-ups 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, 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 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.