

Award No. 13510
Docket No. TE-14260

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 Company, that:

1. Carrier violated the terms of an agreement between the parties hereto when on July 10, 1962, it required or permitted Section Foreman Pete Whitten, an employe outside the scope of said Agreement to copy a train line-up over the dispatcher's telephone at Gibson, Ill., at a time when the telegrapher assigned at this station was off duty, but available to perform this service.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate R. V. Horsch a call in accordance with the provisions of Rule 5.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective September 1, 1955, and as amended. Copies of said Agreement are, under law, assumed to be on file with your Board and are by this reference made a part hereof.

At page 28 of said Agreement are listed the positions existing at Gibson City, Illinois on the effective date of said Agreement. For your Board's ready reference, the listings read:

"DECATUR DIVISION

Telegraphers

Location	Title	Rate Per Hour
Gibson City	AT	\$2.00½
	2nd T	1.81½
	3rd T	1.81½"

The foregoing listings establish that as of the effective date of the Agreement telegraph (telephone) positions were maintained by the Carrier on an

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 I, Sections 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), Section 7, and Section 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 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, 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 the receipt or the copying of train line-ups may be performed only by telegraphers, nor have they agreed that a telegrapher will be paid a "call" as provided for in Rule 5 of the telegraphers' agreement, and which is herewith claimed in this dispute, when other than a telegrapher receives or copies a train line-up.

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.

In view of the foregoing, the claim should be dismissed, and if not dismissed, then 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 re-

solved 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, 10498 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 Employes involved in this dispute are respectively Carrier and Employes 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.