

Award No. 13606

Docket No. TE-12514

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway that:

1. The Carrier violated the agreement between the parties when at 11:00 A. M., February 17, 1960, it permitted or required the Agent at New Bern, North Carolina, to transmit a message from New Bern to Norfolk, Virginia, even though the Operator-Clerk was available for duty.

Because of said violation the Carrier shall be required to compensate Operator-Clerk A. H. Whitty, New Bern, wages equivalent to a "Call" payment, i.e., two hours' pay at overtime rate.

EMPLOYEES' STATEMENT OF FACTS: Claimant was the duly, regularly assigned operator-clerk at New Bern, North Carolina. His assigned hours on February 17, 1960, were 4:00 P. M. to 12:00 M.N. In addition to claimant there is also an agent and a clerk, neither of whom is covered by the Telegraphers' Agreement, and, consequently, had no standing in the performance of communication work at that point.

At 11:00 A. M., February 17, 1960, one hour prior to the commencement of Claimant's tour of duty, the Agent, Mr. H. W. DuMeer, took it upon himself to transmit the following message from New Bern to Norfolk, Virginia:

"C. F. Morris - Norfolk

Advise if thru rate applies to divert a car Hampton, Va. originally diverted to New Bern. Want to divert to Jacksonville, N. C. if can do so on thru rate."

Claimant filed a time claim on February 17, 1960, asking that he be paid a "Call" — two hours' pay at time and one-half rate, because of the Agent, an employee not covered by the Agreement and having no assignment or right to perform such communication service, did perform work attaching to Claimant's classification. The time claim was rejected by the General Superintendent.

and carrier contends that the incident giving rise to this claim falls within such category, and that the petitioners have negotiated such agreement with the respondent carrier are bound by the terms of such agreement.

Carrier's position is that the claim is without merit or contractual basis, and that same should be denied and urges that your Division so hold.

(Exhibits not reproduced.)

OPINION OF BOARD: The force at the agency at New Bern, North Carolina, consists of a Supervisory Agent, a Clerk, and an Operator-Clerk. The assigned hours of the Operator-Clerk are 4:00 P.M. to 12:00 Midnight.

The incident involved in this claim took place at about 11:00 A.M., February 17, 1960. A shipper called the agent at New Bern and asked if it would be possible to divert a car of limestone moving from Buchanan, Va., and billed to the shipper at New Bern, to Jacksonville, North Carolina, on the through freight rate.

The car was then in transit. The shipper desired to have the information prior to the arrival of the car at New Bern, so that it might be diverted. If diversion was not feasible, the shipper could then order another car from Buchanan to be billed directly to Jacksonville, North Carolina. The Agent used the company telephone and called the Transportation Assistant at Norfolk, Virginia, for the information requested by the shipper.

Petitioner alleges that the Agreement was violated when the Agent used the telephone to obtain the information, and that he should be allowed a call for this work.

The basic question involved in this dispute is whether or not the work performed by the Agent properly belonged to the telegrapher. The Organization contends that this is a communication concerning the diversion of a car of freight, and, consequently, the telegrapher should have been called to send the request for information. The Carrier says that this type of communication is not reserved to the telegraphers, but is of the type ordinarily handled by the Agent.

Many awards have been cited in this docket, but few of them are concerned with diversion orders. However, we believe that Awards 14 and 58 of Special Board of Adjustment No. 117 relate to this general area and give us some guide lines to follow.

Award 14 of Special Board of Adjustment No. 117 says, in part:

"An examination of the record in this case leaves little doubt that the information transmitted here related to the 'control of transportation' within the meaning ordinarily subscribed to that term, and was one for which there existed both a 'requirement of' and a 'need for' that such information relating thereto be 'made of record'."

In Award No. 58 of the Special Board of Adjustment No. 117, the Organization, relying on Award No. 14, urged that the following message suited the requirements of Award No. 14:

"St. Louis, 11-8-55

Hughes, Nevada

Mine sixth car SFRD 3633 waybill MDT 3633 advise done forwarding car to Durham N.C. and sending WB to Joplin Mo. RC-15216-7 car SFRD 3633 waybill MDT 3633.

Darwin"

The Special Board held as follows, concerning this message:

"If the above message is, in truth and in fact, one which pertains or amounts to a diversion order, either primarily or secondarily, it is a message of record within the meaning of both prior awards of the Third Division of the National Railroad Adjustment Board and Award No. 14 of Special Board of Adjustment No. 117. On the other hand, if it is a message which seeks information pertaining to the completion of a diversion order which had already been communicated, it cannot be said that the information therein contained related to the 'control of transportation' within the meaning subscribed to that term or that the message was one for which there existed both a 'requirement of' and a 'need for' that such information relating therefrom be 'made of record' within the meaning of our findings and holdings in Award No. 14.

We cannot conclude that the message above quoted was a diversion order. An examination of the verbage thereof indicates that the office at Nevada had previously been given advice concerning the diversion of a car whose number and attached waybill had therein been contained. The Board concludes that the message here was, in effect, a 'tracer' seeking information as to whether or not the previously requested diversion had been completed. This being so, we cannot here find or hold that this message related to 'control of transportation' and constituted a message of record for which a 'need for' or 'requirement of' existed that it be made 'of record.' The facts of record here are clearly distinguishable between those which existed and upon which the Board passed upon in Award No. 14."

The subject of the communication in the instant case seems to be one of seeking information. It may be inferred that if such information so warranted, a diversion order would subsequently be issued. We find little difference in the "preliminary information request" in this case, and the "tracer" in Award 58, insofar as they relate to the "control of Transportation." We are of the opinion that the communication involved in this claim is not of that nature which could be classified as a diversion order. Even though the Organization's point is well taken, that such communication "concerns" the diversion of a car of freight, we do not believe that it meets the test in relation to the "control of transportation." Therefore, the claim is denied.

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 21st day of May 1965.