

Award No. 13636
Docket No. TE-12014

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Florida East Coast Railway (J. Turner Butler and William A. Hallowes, Trustees), that:

1. Carrier violated agreement when on July 4, 1959, it blanked position No. 24 (2:30 P. M. to 10:30 P. M.) at Bowden Yard, Florida, owned by C. F. Draughon, and allowed work which belonged to that position to be performed by others.
2. Carrier will compensate C. F. Draughon for eight (8) hours at time and one-half rate of position No. 24, Bowden Yard, Florida, for the violation above set out on July 4, 1959.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect, a collective bargaining agreement entered into by and between Scott M. Loftin and John W. Martin, as Trustees of the Florida East Coast Railway Company, hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The foregoing agreement was effective September 1, 1948 and was amended, effective September 1, 1949. The agreement was adopted in full by successor Trustees of the Carrier, namely, J. Turner Butler and William A. Hallowes.

The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. This Division, under the Railway Labor Act, as amended, has jurisdiction of the parties and subject matter.

The questions submitted to this Board are (1) whether the Carrier violated agreement rules in failing and refusing to permit the claimant, who was ready, willing, and able to perform the duties, services, and work required in normal, carrier operation within his regular, weekday assigned hours at

have been the work of a telegrapher to so transmit them, but, where no transmission was necessary or accomplished, the telegraphers' craft had no claim to the work.

Similarly, the fact that the Railway did not need or desire a telegraphic consist of Train 2/343 (the third of the Employees' contentions), lends no support to the instant claim of the employees, or as held, in pertinent part, in the Opinion of the Third Division in its Award 8327:

"... It is a fundamental principle that whether to have work done or not is in the Carrier's sole discretion. . . . It is only when a carrier decides to have work performed that the rights of employees to perform that work arises. . . ."

4. Equally devoid of merit is the final contention of the Employees to the effect that a portion of the claimant's work remained to be performed on July 4, consisting of the transmittal of the consist of Train 1/343, since it was performed by the first trick operator on overtime. As developed in Item No. 3, Carrier's Statement of Facts, at 2:30 P.M., July 4, the first trick operator had partially transmitted the consist of Train 1/343 which had departed from Bowden Yard at 1:20 P.M. and he remained on duty 25 minutes beyond the end of his assigned tour, or until 2:55 P.M., to complete the transmission of that consist, for which he was paid 25 minutes at overtime rate. There can be no possible support, therefore, for the contention of the Employees that this was work of the claimant, a fact recognized by the first trick operator (J. R. Spivey), who, in a statement dated October 1, 1959, a photographic copy of which is attached as Carrier's Exhibit "A" and by reference made a part of this submission, advised, in pertinent part, that:

"... At 230 PM I phoned the Chief Dispatcher . . . and asked him if he wished me to remain on duty until finished transmitting the consist. Mr. Vlasin advised me to remain and complete it."

Train 1/343 departed from Bowden Yard at 1:20 P.M. on the date involved and the transmission of the consist of this train normally would have been completed before 2:30 P.M., however, as the first trick operator remained on duty for 25 minutes completing this work begun by him during his regular hours, he was paid 25 minutes overtime under paragraph (b) of Article 7 of the Telegraphers' Agreement, which provides:

"For service following and continuous with regular working hours, employees will be paid time and one-half rate on the actual minute basis."

The transmission of this consist was a part of the work of the first trick telegrapher, begun by him during his regular hours, and was not, therefore, a part of the work of Position No. 24. Any contention of the Employees to the contrary must be denied.

For the reasons stated the claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts and respective contentions of the parties are fully set out in the submissions and need not be repeated here.

The issue has been before the Division in substantially similar cases a number of times: Awards 5824, 9203, 10602, 12221, 12702. These awards, not being palpably erroneous, are controlling. The claim will be sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1965.