

Award No. 13714

Docket No. TE-13389

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

1. Carrier violated the Telegraphers' Agreement when on January 2, 1961, it failed and refused to permit W. H. Coley, Clerk-Telegrapher, Gainesville, Georgia, to deliver train orders Nos. 56 and 57, and clearance card, addressed to Extra 6204, but instead required W. H. Coley to leave said orders and clearance card on desk in office to be picked up by train service employees of said train.

2. Carrier shall now compensate W. H. Coley for one call, two hours and 40 minutes, at time and one-half rate, or \$9.88.

EMPLOYEES' STATEMENT OF FACTS: Gainesville, Georgia is located on the Carrier's main line between Charlotte and Atlanta. At Gainesville there is a negotiated position of clerk-telegrapher with assigned hours of 7:00 A.M. to 4:00 P.M., seven days per week, with Tuesday and Wednesday as the assigned rest days covered by a regular relief assignment. Claimant W. H. Coley is the regularly assigned clerk-telegrapher at Gainesville and the only employe under the Telegraphers' Agreement at that location. On January 2, 1961, his negotiated rate of pay for the position of clerk-telegrapher was \$2.4450 per hour. The overtime rate, or the time and one-half rate, was \$3.650 per hour.

Lula, Georgia is located 12.4 miles north of Gainesville. There is a branch line from Lula, Georgia to Athens, Georgia, a distance of 38.9 miles.

Sunday, January 1, 1961, was New Year's Day, one of the seven negotiated holidays under the agreement and also a work day of the clerk-telegrapher position. Under this agreement when the holiday falls on Sunday, the day following, Monday, January 2, 1961, was observed as the holiday. Monday, January 2, 1961, was also a work day in the work week in the clerk-telegrapher position.

On Sunday, January 1, 1961, Telegrapher Coley was instructed and re-

1956. In that case, as in the one before us, the telegrapher left the train order on the train register book, and claimed a call. There was no train order rule, but the Referee held that 'the work of handling train orders on the lines of this Carrier is typical of work reserved' under the Scope Rule. So, as pointed out earlier in this Opinion, the absence of a train order rule was immaterial to the case: the Scope Rule gave the same rights as a train order rule could have given. The claim was denied on principle, without any reference being made to the precedents.

So we have a situation where we must decide either on the basis of a long line of precedents which we think unsound and contrary to principle, or on the basis of principle supported by two Awards, Nos. 1821 and 7343. We must either repudiate our latest decision supported by one earlier decision and principle, or confirm our latest decision and repudiate the earlier decisions as erroneous. We have no question as to our duty. It is to confirm Award Nos. 1821 and 7343, and thus confirm sound and long-established general principles. No one is entitled to perform work that the carrier does not want performed by anyone. Neither the Scope Rule nor the Train Order Rule is violated except when some employe other than a telegrapher performs telegrapher's work. For these reasons the claim will be denied." (Emphasis ours.)

The parties in Award 8327 had a train order rule similar to the one here involved.

The evidence of record does not support petitioner's contention that the agreement was violated, nor does it support the claim for pay. For the reasons set forth herein, the claim should be denied in its entirety, and carrier respectfully requests that the Board so decide.

(Exhibits not reproduced).

OPINION OF BOARD: This case involves the same parties, Agreement and issue as Award No. 13712. For the reasons stated in that Award we will sustain the claim.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1965.

CARRIER MEMBERS' DISSENT TO AWARD 13714, DOCKET TE-13389

(Referee John H. Dorsey)

As reliance is placed upon Award 11788, our dissent to that award is, by reference, made a part of this dissent.

The award here sustains the claim though admittedly the Carrier did not permit employees not covered by the contract to handle the train orders involved. The train orders involved in this dispute were left on desk in office by claimant telegrapher and were not subsequently "handled" or even touched by anyone until picked up by the crew to whom they were addressed. Certainly inherent in such a claim is the obligation of petitioner to prove handling by non-contract employees, yet the majority ignored this and followed Award 11788 which sustained the claim merely because other referees in prior awards had committed similar error.

The award is erroneous and we respectfully dissent.

/s/ R. A. DeRossett
R. A. DeRossett

/s/ W. F. Euker
W. F. Euker

/s/ C. H. Manoogian
C. H. Manoogian

/s/ G. L. Naylor
G. L. Naylor

/s/ W. M. Roberts
W. M. Roberts