

Award No. 14658  
Docket No. TE-13089

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

David H. Brown, Referee

**PARTIES TO DISPUTE:**

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

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad, that:

1. The Carrier violated Rule 1(a) and (d) of the Telegraphers' Agreement when at 6:37 A.M., December 31, 1960, it permitted or required Conductor Kelley of Train No. 44 to copy Train Order No. 56 at Kincaid, Kansas.

2. Because of said violation, Carrier shall be required to pay Agent-Telegrapher F. F. Sweet, Kincaid, Kansas, a day's pay at the minimum rate for telegraphers.

**EMPLOYEES' STATEMENT OF FACTS:** At 6:37 A.M., December 31, 1960, at Kincaid, Kansas, the Conductor of Train No. 44, an employe not covered by the Telegraphers' Agreement, copied (from the Train Dispatcher) and delivered Train Order No. 56 addressed to No. 44 reading:

"No. 43 Engine 72-A wait at Paola until 8:30 A.M. for No. 44 Engine 77-A."

Claimant is the regularly assigned Agent-Telegrapher at Kincaid with a daily assignment of eight hours, Monday through Friday of each week. Kincaid is a one-man station and claimant is entitled to perform all such service that is required or occurs at his station during his assigned hours, outside of his assigned hours, work days and rest days. December 31, 1960, was a rest of his assignment.

The Agreement between the parties, which by this reference is hereby placed in evidence, provides:

**"RULE 1. EMPLOYEES INCLUDED**

(a) These rules and working conditions will apply to Agents, Freight Agents, or Ticket Agents, Agent-Telegraphers, Agent-Telephoners, Relief Agents, Assistant Agents, where they have charge

Insofar as your attack on us that we 'withdrew 3 claims' on October 1, 1959, because the Agent-Telegrapher at that office was not on duty, is entirely the employee's prerogative and the Organization's representative.

In Awards 1657, 5765, and 5792, where you made the same attack, the Third Division told you in no uncertain terms that it was our business if we wanted to withdraw the claims. However, we withdrew those claims for a good reason, which we considered within our own jurisdiction, and not because of any defect in the claim.

We therefore, respectfully request that you comply with the agreement, and pay these claims, or if you want to discuss it further, we will be glad to meet with you and see if we can't come to an understanding, and if not, we will have to refer to the National Railroad Adjustment Board, Third Division.

Please acknowledge receipt."

**CARRIER'S STATEMENT OF FACTS:** Claimant, F. F. Sweet, is the Agent-Telegrapher at Kincaid, Kansas with assigned hours of 7:45 A. M. until 4:45 P. M., less one hour for lunch, Monday through Friday, less holidays, and rest days of Saturday and Sunday. Claimant resides at Parker, Kansas, 21.2 rail miles from Kincaid.

Saturday, December 31, 1960 at Kincaid, Kansas, Conductor Kelly of Train No. 44 copied a Train Order at 6:37 A. M. or during a time the Claimant was not on duty and was neither available nor could be promptly located to handle the train order.

General Chairman W. C. Thompson in his letter of January 10, 1961, presented this claim to Superintendent R. B. George and said unless the claim was allowed for a call under Rule 1(e) the claim was for one day under Rules 1(a) and 1(d).

The correspondence of the handling of this alleged claim on the property is attached hereto and made a part hereof, Carrier's Exhibit A.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This claim is controlled by our decision in Award Number 14656 involving the same parties. Claimant F. F. Sweet is entitled to a call for the violation of December 31, 1960.

**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 violated.

**AWARD**

Claim sustained in conformity with opinion.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois this 15th day of July 1966.

**CARRIER MEMBERS' DISSENT TO AWARD 14658**  
**DOCKET TE-13089 (Referee Brown)**

We adopt the dissent to Award 14657 for our dissent to Award 14658.

**W. M. Roberts**  
**G. L. Naylor**  
**C. H. Manoogian**  
**R. A. DeRossett**  
**H. K. Hagerman**