

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

Arthur W. Devine, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly 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, that:

1. Carrier violated the Agreement when it required or permitted employes not covered thereby to perform communication service of record by use of the telephone on November 22, 1960 and January 19, 1961, at Mexico, Missouri.

2. Carrier shall now be required to compensate, on the basis of a "call" for each; Mr. H. L. Neifert, third trick telegrapher, for the violation occurring on November 22, 1960; and Mr. C. T. Johnson, second trick telegrapher, for the violation occurring on January 19, 1961; both claimants regularly assigned at Mexico, Missouri.

EMPLOYEES' STATEMENT OF FACTS: On November 22, 1960, an incident involving a communication of record occurred at Mexico, Missouri, which gave rise to the charge of Agreement violation and filing of claim therefor in favor of H. L. Neifert, as shown in the letter addressed to Mr. H. N. Burton, Superintendent, by District Chairman R. T. Hannah on December 12, 1960, which is reproduced below:

"Claim is presented as follows:

Carrier violated the Agreement when on the 22nd day of November, 1960, it caused, required or permitted a member of the Mexico Switch Engine Crew, an employe not covered by the Telegraphers' Agreement, to perform work of transmitting and receiving communication of record, over the dispatcher's telephone at Mexico, Missouri.

Carrier shall compensate Mr. H. L. Neifert, Telegrapher, third shift position, Mexico, Missouri, for one call, two (2) hours at time and one-half pro rata rate, for the violation set forth.

they did not already have. By reason of Rule 93 of the Rules of the Operating Department that crew could use the main track at Mexico protecting only against first class trains and had priority to the use of the main track over freight trains (including "No. 90's Extra", referred to in the conversation between Conductor Guittar and the train dispatcher).

In the General Chairman's letter to the Manager-Personnel, dated February 6, 1961, he states:

"The fact that there was a telegrapher on duty close by does not authorize the trainmen to call the dispatcher for a line-up."

Conductor Guittar did not receive a train line-up from the train dispatcher and the conversation between the conductor on the switch local and the train dispatcher did not extend, nullify or limit the authority the crew of the Mexico Switch Local had before the conversation took place.

Copy of all of the correspondence between the representatives of the parties to this dispute as pertaining to the claim presented on behalf of Telegrapher C. T. Johnson is attached hereto and made a part hereof, marked Carrier's Exhibit B.

(Exhibits not reproduced.)

OPINION OF BOARD: On November 22, 1960, a member of the Mexico Switch Crew, an employee not covered by the Telegraphers' Agreement, communicated with the Train Dispatcher at a time when Claimant Neifert was on duty as a Telegrapher and available to perform the work.

Also, on January 19, 1961, the Conductor on Mexico Switch Local, an employee not covered by the Telegraphers' Agreement, talked to the Train Dispatcher at a time when Claimant Johnson was on duty as a Telegrapher and available to perform the work.

Claimants each seek the payment of a minimum "call" (three hours' pay for two hours' work or less) because the Carrier permitted an employee not covered by the Telegraphers' Agreement to perform work of transmitting and receiving alleged communications of record.

Prior awards between these same parties have held in each instance that the Organization has failed to prove that communications of record belong exclusively to the Telegraphers. We find no evidence in our record to justify a finding to the contrary. The Claims will be denied in line with Awards 11401 (Hall), 11671 (Rinehart), 13501-13504 (Moore), 13506-13508 (Moore), and 13510 (Moore).

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of December 1966.