

Award No. 15396

Docket No. TE-14040

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

Daniel House, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION EMPLOYEES 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. The Carrier violates the terms of the agreement when it requires or permits the conductor of Train No. 92 scheduled to arrive at Yellow Leaf at 7:00 A. M. to report on the dispatcher's telephone his time of arrival, cars handled, time went off duty and other information that is required on the following designated dates and all subsequent dates to and including August 25, 1961:

Date	Train	Conductor	Arrival	Off Duty	Cars Arrived	Cars Handled
7-11-61	92	Horne	5:50 AM	5:50 AM	79	79
7-12-61	92	Peake	6:25 AM	6:40 AM	79	79
7-13-61	92	Horne	6:55 AM	6:55 AM	82	82
7-14-61	92	Peake	6:15 AM	6:25 AM	83	83
7-15-61	92	Horne	6:25 AM	6:25 AM	60	60
7-16-61	92	Peake	2:55 AM	3:05 AM	25	25
7-18-61	92	Horne	7:40 AM	7:40 AM	85	85
7-19-61	92	Powell	6:10 AM	6:10 AM	85	85
7-20-61	92	Nix	6:30 AM	6:45 AM	85	85
7-21-61	92	Powell	6:00 AM	6:15 AM	85	85
7-22-61	92	Nix	5:20 AM	5:35 AM	60	60
7-23-61	92	Peake	3:20 AM	3:30 AM	25	25
7-24-61	92	Nix	7:40 AM	7:55 AM	85	85
7-26-61	92	Peake	6:35 AM	6:45 AM	85	85
7-27-61	92	Nix	7:25 AM	7:40 AM	85	85

Date	Train	Conductor	Arrival	Off Duty	Cars Arrived	Cars Handled
7-28-61	92	Peake	7:25 AM	7:35 AM	85	85
7-29-61	92	Nix	7:15 AM	7:30 AM	58	58
7-30-61	92	Peake	3:20 AM	3:30 AM	25	25
8- 1-61	92	Nix	7:30 AM	7:45 AM	82	82
8- 2-61	92	Peake	5:15 AM	5:25 AM	88	88
8- 3-61	92	Nix	4:45 AM	5:10 AM	86	86
8- 4-61	92	Peake	5:15 AM	5:25 AM	88	88
8- 5-61	92	Nix	5:30 AM	5:40 AM	86	86
8- 8-61	92	Nix	6:00 AM	6:15 AM	88	88
8- 9-61	92	Peake	5:50 AM	6:05 AM	86	86
8-10-61	92	Nix	5:00 AM	5:15 AM	87	87
8-11-61	92	Peake	5:20 AM	5:35 AM	87	87
8-12-61	92	Nix	7:35 AM	7:50 AM	62	62
8-13-61	92	Peake	4:25 AM	4:35 AM	45	45
8-15-61	92	Nix	6:50 AM	7:05 AM	87	87
8-16-61	92	Peake	4:40 AM	4:55 AM	87	87
8-17-61	92	Nix	5:40 AM	5:55 AM	87	87
8-18-61	92	Peake	5:05 AM	5:05 AM	78	78
8-19-61	92	Nix	5:25 AM	5:40 AM	62	62
8-20-61	92	Peake	3:20 AM	3:30 AM	25	25
8-22-61	92	Nix	8:25 AM	8:25 AM	66	66
8-23-61	92	Peake	5:40 AM	5:40 AM	76	76
8-24-61	92	Nix	4:55 AM	4:55 AM	64	64
8-25-61	92	Peake	5:20 AM	5:20 AM	82	82

2. Carrier will compensate Mr. S. H. Green, the regular agent-telegrapher at Columbiana, Ala., for a call of 2 hours and 40 minutes for each of the above enumerated dates at the time and one-half hourly rate of the Columbiana agency.

EMPLOYEES'S STATEMENT OF FACTS: On the Carrier's railroad between Wilton and Rome are two locations known as Columbiana and Yellow Leaf. Yellow Leaf is located 9.5 miles from Columbiana but the Carrier requires the Agent-Telegrapher S. H. Green who is assigned at Columbiana, to perform all of the work in connection with any agency or train movements at Yellow Leaf. If there is need for or necessity of, a train order, Agent Green copies the train order at Columbiana and by use of his automobile, handles the train order at Yellow Leaf.

Train No. 92, which is known as a coal train, operates from the generating plant at Yellow Leaf, Alabama, and is scheduled to arrive at Yelow Leaf at 7:00 A. M. The Carrier, on the dates and times in question, required or permitted the Conductor to come in on the Dispatcher's phone at Yellow Leaf and

"RULE 44.

TERMS OF AGREEMENT

This agreement supersedes and cancels all former agreements, but does not, except where rules are changed, alter former accepted and agreed to practices, working conditions or interpretations.

This agreement is revised as of September 1, 1949 and shall continue in effect until thirty (30) days' written notice is given by either party to the other of desire to revise or modify in accordance with the provisions of the Railway Labor Act."

The Chicago Agreement of August 21, 1954, contains the following provisions identified as Section 1(a) of Article V:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

OPINION OF BOARD: Claim is that a conductor performed work belonging to Claimant in using a telephone at Yellow Leaf to give the listed information to a dispatcher. Claimant is an Agent-Telegrapher assigned to Columbiana, located about 9.5 miles from Yellowleaf.

In the face of Carrier's assertion that Yellow Leaf is a blind siding to which no agent is assigned, Employees assert, but give no proof, that Columbiana is the governing agency for Yellow Leaf and that Claimant, as a part of his assignment, handles train orders at Yellow Leaf when they are needed.

In a number of prior awards involving the same parties as here (among them Awards Numbered 11812, 12150, 12699 and 12935) we have found that similar use of the telephone by others than Telegraphers at locations where no Telegrapher was stationed has been the practice on this property. The critical question in each such case is whether the specific work involved is proved by tradition, custom or practice to have been performed exclusively by Employees; Employees have here failed so to prove.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereof, and upon the whole record and all the evidence, finds and holds:

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 10th day of March 1967.