

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Texas and Pacific Railway that:

1. Carrier violated the terms of an Agreement between the parties hereto when on March 7, 1963, it required or permitted Fireman R. J. Deshotel, an employe not covered by said Agreement, to handle (receive, copy and deliver) Train Order No. 14 at Addis, Louisiana.

2. Carrier shall, because of the violation set out above, compensate Operator G. E. Booksh, assigned at Addis, Louisiana, for two hours at the time and one-half rate (a call).

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Texas & Pacific Railway Company, hereinafter referred to as Carrier, and its Telegraphers and certain other employes thereon represented by The Order of Railroad Telegraphers, hereinafter referred to as Employes, and/or Organization, effective May 15, 1950, and as otherwise amended. Copies of said Agreement as required by law are assumed to be on file with this Board and are, by this reference, made a part hereof.

At page 40 of said Agreement, under Rule 29 (Wage Scale), are listed the positions at Addis, Louisiana on the effective date thereof. For ready reference, the listing reads:

“ * * * * *
Addis.....Agent.....\$1.762
Operators 1.606
* * * * *”

The above listing establishes that communication positions are maintained on an around-the-clock basis at Addis, Louisiana. That employes filling these positions are classified as Operators (telegraph or telephone) and that Addis is a telegraph or telephone office within the meaning of Rule 20(d) of the parties' Agreement.

not authorized by train dispatchers. Claim was made for loss of work . . . not congruous.

Award 10364, ORT v. AT&SF, covers claim of named claimant for loss of work . . . unrelated.

In this connection it must be remembered (and just as courts have said in applying principles of law) that there should be no damages imposed where no wrong is suffered, although the conduct complained of by you might in your opinion be wrongful, there is here present a case where it must be held that no penalty should flow where no loss is sustained.

There was no justifiable reason for us to require the train to back up to the depot to get a copy of the Order. Nor would it have been feasible to require the telegrapher or the fireman to twice walk the length of the train. The telegrapher on duty copied the order, and there is no basis for adjustment to an off-duty telegrapher.

The claim is respectfully denied."

Accordingly, the Board is urged to deny the claim for lack of merit.

OPINION OF BOARD: The issues in this case are not complex. Careful reading of the Record reveals that Carrier violated the Agreement of the Parties as alleged in the above-shown Statement of Claim.

A treatise would be of dubious value.

This Claim should 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 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 by Carrier.

AWARD

Claim allowed as presented.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1967.

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