



Award No. 15936
Docket No. TE-14376

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY

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

CLAIM NO. 1

The Carrier violated Rule 1, Scope and Rule 10, Calls of the Telegraphers' Agreement on dates listed herein when it required or permitted employes not covered by the Telegraphers' Agreement to receive and transmit messages of record.

Violation No. 1: January 27, 1962 the train dispatcher transmitted by telephone a message of record to Mr. Kemp, track supervisor, at Woodstock, Alabama. Mr. Kemp then repeated the message to the dispatcher.

Violation No. 2: December 17, 1961, January 26 and 27, 1962 the train dispatcher transmitted by telephone messages of record to Mr. Andrews and Mr. Sims, track supervisors at Tuscaloosa, Alabama. These messages were repeated to the dispatcher by Mr. Andrews and Mr. Sims.

Violation No. 3: December 17, 1961, January 5 and 27, 1962 the train dispatcher transmitted by telephone, messages of record to Mr. Andrews and Mr. Sims, track supervisors at Moundville, Alabama. These messages were repeated to the dispatcher by Mr. Andrews and Mr. Sims.

For violation No. 1, Carrier shall compensate Mr. J. C. Daniel, agent-telegrapher, Woodstock, Alabama, by paying him one call on January 27, 1962.

For violation No. 2, Carrier shall compensate Mr. G. C. Wilemon, clerk-telegrapher, Tuscaloosa, Alabama by paying him one call each day for December 17, 1961 and January 26 and 27, 1962. A total of three calls.

For violation No. 3, Carrier shall compensate Mr. E. L. Day, agent-telegrapher, Moundville, Alabama by paying him one call each day for December 17, 1961, January 5 and 27, 1962. A total of three calls.

The Carrier violated Rule 1, Scope and Rule 10, Calls, of the Telegraphers' Agreement on dates listed herein when it required or permitted employes not covered by the Telegraphers' Agreement to receive and transmit messages of record.

Violation No. 1: December 17, 1961 and January 26, 1962 the train dispatcher transmitted by telephone messages of record to Mr. Andrews and Mr. Sims at Akron, Alabama.

Violation No. 2: January 12, 16, 27 and 29, 1962, the train dispatcher transmitted by telephone messages of record to Mr. Sims, Mr. Price and Mr. Latham as listed herein at Eutaw, Alabama.

Violation No. 3: January 11, 13 and 27, 1962, the train dispatcher transmitted by telephone messages of record to Mr. Sims and Mr. Garreston as listed herein at York, Alabama.

For violation No. 1, Carrier shall compensate Mr. I. V. Stokes, agent-telegrapher, Akron, Alabama by paying him one call each day for December 17, 1961 and January 26, 1962. A total of two calls. The same compensation shall be allowed to Mr. I. V. Stokes for each subsequent date that the violation of transmitting and receiving messages of record are permitted.

For violation No. 2, Carrier shall compensate Mr. W. L. Magee, agent-telegrapher, Eutaw, Alabama by paying him one call for each day on January 12, 16, 27 and 29, 1962, a total of four calls and the same compensation shall be allowed Mr. W. L. Magee for each subsequent date that the violation of transmitting and receiving messages of report and record is permitted.

For violation No. 3, Carrier shall compensate Mr. H. L. Hoot, agent-telegrapher, York, Alabama by paying him one call each day for January 11, 13 and 27, 1962, a total of three calls and the same compensation shall be allowed Mr. H. L. Hoot for each subsequent date that the violation of transmitting and receiving messages of report and record is permitted.

This is a continuing claim for all violations subsequent to the dates shown herein.

EMPLOYEES' STATEMENT OF FACTS: In Claim No. 1, Mr. J. C. Daniel was the regular assigned agent-telegrapher at Woodstock, Alabama, with assigned hours of 7:00 A. M. to 4:00 P. M., Monday through Friday with Saturday and Sunday as rest days. On January 27, 1962 the train dispatcher transmitted by telephone the following message to Mr. Kemp, the track supervisor located at Woodstock, who in turn, repeated the message to the dispatcher:

man on May 15 and 28, 1963, which was before the ORT filed its letter of intention to submit the claims here involved to the Board.

The agreement between Carrier and its employees as represented by The Order of Railroad Telegraphers, revised effective September 1, 1949, contains, among others, the following rules:

"RULE 1. SCOPE

(a) This agreement applies to all telegraphers — telegrapher-clerks, telephone operators (except telephone switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, block operators and staffmen, operators of mechanical telegraph machines, wire chiefs, assistant wire chiefs, or analogous positions hereafter established; also such station agents and assistant station agents and ticket agents as are listed herein.

(b) The word 'employee' as used in these rules will apply to all the foregoing classes, and employees will be classified according to duties performed."

"RULE 10. CALLS

(a) Except as otherwise provided in these rules, employees called to perform work outside of established hours will be paid a minimum of two (2) hours and forty (40) minutes at time and one-half rate for two hours and forty minutes' work or less, additional time calculated on minute basis at time and one-half rate.

(b) For work in advance of and which continues to starting time of regular work period, employees will be paid a minimum allowance of one hour at time and one-half rate for one hour or less, additional time calculated on minute basis at same rate."

"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."

(Exhibits not reproduced.)

OPINION OF BOARD: In both claims 1 and 2, the Organization contends that Carrier violated "Rule 1 — Scope" and "Rule 10 — Calls" of the Agreement when it allowed personnel operating track motor cars in a CTC area to

contact the dispatcher and request his permission to occupy the main tracks instead of using Claimants, the regularly assigned telegraphers.

The Organization relies solely upon its contention that the work was within the "scope" and "call" rules of the agreement. A perusal of the Scope Rule discloses that it is general in nature. Notwithstanding same, the Organization failed to prove that such work had traditionally and exclusively been done by telegraphers such as Claimants. Therefore, it failed to meet its burden of proof and the claims are denied. See Award 12710 (Yagoda), claims 2 and 3, for a similar decision between the parties; also see Award 14538 (Perelson).

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 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 Carrier did not violate the Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1967.