

Award No. 16822
Docket No. TE-14955

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, 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. Carrier violated the Telegraphers' Agreement as is herein set forth in violations 1 through 7, when they required or permitted employes not covered by the Telegraphers' Agreement, by using the Carrier's telephone, to transmit and receive communications of record at Raleigh, N. C., performing communication work that belongs exclusively to employes covered by the Telegraphers' Agreement.

Violation No. 1, 9-10-62. Clerk Goodman at Raleigh, N. C., to the Dispatcher at Greensboro, N. C. 9:49 A. M.: No. 52 arrived 7:20 A. M., left 7:42 A. M.

Violation No. 2, 9-14-62. Dispatcher at Greensboro, N. C., to Clerk High at Raleigh, N. C. 9:38 A. M.: How about No. 82? Clerk High "No. 82 arrived 9:15 A. M., out 9:30 A. M."

Violation No. 3, 9-18-62. Clerk High at Raleigh, N. C., to the Dispatcher at Greensboro, N. C. 10:44 A. M.: Extra 2132 West, No. 83's train, left at 10:40 A. M. No. 16 left at 10:40 A. M.

The Carrier also violated the Telegraphers' Agreement when on the same date, September 18, 1962, it allowed, required or permitted Mr. Smith, an employe not covered by said Telegraphers' Agreement, to handle (receive, copy and/or deliver) train orders numbers 709 and 713 as follows:

"FORM
31

SOUTHERN RAILWAY SYSTEM

FORM
31

TRAIN ORDER NO. 709

DATE: September 18, 1962

TO: C&E No. 16 at Raleigh
care Agent King

AT: Cary, N. C.

No. 16 sixteen engine 4144 take siding meet extra 2132 West at Raleigh.

RTW, Chief Dispatcher.
Smith, Operator

Conductor or engineman - King train 16 made Complete
time 6:20 AM Operator Smith"

"FORM
31

SOUTHERN RAILWAY SYSTEM

FORM
31

TRAIN ORDER NO. 713

DATE: September 18, 1962

TO: C&E Engine 4144 at Raleigh
care Agent King.

AT: Cary, N. C.

Engine 4144 run as No. 16 sixteen Raleigh to Goldsboro yard.

RTN, Chief Dispatcher.

Made: Complete

Time: 8:20 AM

Smith, Operator"

Violation No. 4, 9-25-62. Clerk Goodman at Raleigh, N. C. to the Dispatcher at Greensboro, N. C. 7:17 A. M.: No. 65 arrived Raleigh 6:10 A. M., be leaving in a few minutes. 7:25 A. M.: No. 65 departed 7:22 A. M.

Clerk Goodman at Raleigh, N. C. to Mr. Haight, Clerk, in Chief Dispatcher's Office at Greensboro, N. C. 12:47 P. M.: Raleigh RD-1 report for 25th, JA-2 JO-2 JG-1 JU-1 JM-3.

Violation No. 5, 9-26-62. Clerk Goodman at Raleigh, N. C. to the Dispatcher at Greensboro, N. C. 7:16 A. M.: No. 65 left Raleigh 7:10 A. M.

Violation No. 6, 10-2-62. Clerk High at Raleigh, N. C., to the Dispatcher at Greensboro, N. C. 10:27 A. M.: No. 64 arrived 10:20 A. M., should be going in about 10 minutes. Dispatcher to Clerk High: 10:56 A. M.: When did No. 64 leave: Clerk High: No. 64 left at 10:45 A. M.

Violation No. 7, 10-3-62. Clerk High at Raleigh, N. C., to the Dispatcher at Greensboro, N. C. 10:00 A. M.: No. 64 arrived Raleigh 10:00 A. M. 10:23 A. M.: Agent King at Raleigh, N. C., to the Dispatcher at Greensboro, N. C.: No. 64 just left Raleigh. Dispatcher at Greensboro, N. C., to Clerk High at Raleigh, N. C.: How about arriving and leaving time on No. 82? Clerk High: No. 82 arrived 8:05 A. M., out 8:23 A. M.

EMPLOYEES' STATEMENT OF FACTS: This claim arose as a result of employees not under the Agreement using the telephone at Raleigh, North Carolina, to transmit messages, orders and reports of record to the dispatcher at Greensboro, North Carolina. ORT Exhibits 1 through 9, attached hereto, are copies of correspondence exchanged in the handling of the claim on the property.

"RULE 31.

HANDLING TRAIN ORDERS

No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in emergency, in which case the operator will be so advised by the Chief Dispatcher and will be paid for the call. At offices where two or more shifts are worked, the operator whose tour of duty is nearest the time such orders were handled will be entitled to the call.

NOTE: See letter of October 19, 1929 on page 42, relative to use of telephones by conductors."

"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: It is undisputed that employes in the Telegraphers class have not been assigned to work at Raleigh, North Carolina, on the Danville Division, for approximately forty years. The Organization has processed this Claim because it believes telegraphers should exclusively handle the communications in question at Raleigh, as they do at other points on the Danville Division. Some of the communications in question were train orders covered by Rule 31 of the applicable agreement, the balance of same were telephone communications requiring application of the Scope Rule for determination of the issues.

The Organization has offered no probative evidence to show practice, custom or tradition peculiar to the controversy before us.

This Claim must be determined in accordance with our opinion in Award No. 16821. The fact that Train Orders were involved in this case does not alter our decision, since we are committed to the doctrine of Stare Decisis. See Award No. 12935 (Yagoda).

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 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 19th day of December, 1968.