

Award No. 16824
Docket No. TE-15036

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, 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:

Carrier violated the Telegraphers' Agreement on Saturday, December 23, 1962 at 3:23 P. M. and again on Saturday, January 19, 1963 at 9:52 A. M. when it caused, required or permitted employes not covered by the Telegraphers' Agreement to perform the duties of handling, transmitting or receiving communications or messages of record at Tuscaloosa, Alabama, which from time immemorial, have been performed by employes covered by the scope of the Telegraphers' Agreement.

For violation on Saturday, December 23, 1962 at 3:23 P. M., the Carrier shall compensate G. C. Wilemon, clerk-telegrapher, Tuscaloosa, Alabama by paying him one (1) call for December 23, 1962.

For violation on Saturday, January 19, 1963 at 9:52 A. M., the Carrier shall compensate G. C. Wilemon, clerk-telegrapher, Tuscaloosa, Alabama by paying him one (1) call for January 19, 1963.

Total amount of claim is two (2) calls, \$20.52.

EMPLOYEES' STATEMENT OF FACTS: The claimant, G. C. Wilemon, is the regular assigned Clerk-Telegrapher at Tuscaloosa, Alabama. His position is assigned 8:00 P. M. to 5:00 A. M. with one hour for lunch, Monday through Friday, with Saturday and Sunday as assigned rest days.

On Sunday, December 23, 1962, Agent Williamson at Tuscaloosa transmitted over the telephone to the train dispatcher at Birmingham, Alabama, the following message at 3:23 P. M.:

"Dispatcher, I have eight (8) passengers on train 48 for Chattanooga, is No. 18 going to hold?"

messages of record, as that term has been defined by the National Railroad Adjustment Board. Furthermore, the terms 'message of record' and 'communication of record' cannot be found in the effective Telegraphers' Agreement.

The claim is without basis and is respectfully declined."

The case was discussed by the parties in conference on December 6, 1963, at which time Carrier reaffirmed its previous decision declining the claim.

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

"RULE 1. SCOPE

(a) The 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 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."

OPINION OF BOARD: On Sunday, December 23, 1962 at 3:23 P. M., Agent Williamson at Tuscaloosa transmitted via telephone to the train dispatcher, at Birmingham, the following message:

"Dispatcher, I have eight (8) passengers on train 48 for Chattanooga, is No. 18 going to hold?"

The dispatcher replied to Agent Williamson as follows:

"No. 18 will not hold for No. 48."

On Saturday, January 19, 1963 at 9:52 A. M., the following message was received by the clerk in the agent's office at Tuscaloosa:

"Tell No. 65 to do all the switching at Tuscaloosa."

Claimant is a clerk-telegrapher assigned to Tuscaloosa with hours of 8:00 P. M. to 5:00 A. M., Monday through Friday and rest days of Saturday and Sunday. The Organization argues that Claimant was entitled to be called to perform the duties in question, because said duties are exclusively reserved to employees of his craft under the Scope Rule of the pertinent Agreement.

The test applicable to determine whether or not the work in question was required to be assigned to an employee covered by the telegraphers' agreement has been stated and repeated in numerous decisions involving the identical parties. We must inquire as to practice on the property, i.e., custom, tradition and history regarding the performance of these duties at the location in question. The fact that a clerk-telegrapher was in fact employed at Tuscaloosa does not satisfy the test. Did he by custom establish these duties as the work of telegraphers? If so, an employee of said craft was entitled to perform the work. The Organization has failed to provide evidence sufficient to answer our inquiry. A burden which the Organization alone must carry.

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.