

Award No. 603
Docket No. TE-570

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that the carrier has violated the Telegraphers' Agreement in permitting or requiring signal maintainers or other employees (not represented by The Order of Railroad Telegraphers and occupying positions not within the Scope of the Telegraphers' Schedule) to use the telephone in transmitting messages, reports and/or matters of record at Goffs and Newberry."

EMPLOYES' STATEMENT OF FACTS: "Signal maintainers at Goffs and Newberry are required and/or permitted to transmit and/or receive, regularly, on the telephone, messages, reports and/or matters of record. The following messages, reports and/or matters of record are representative:

'Goffs Sept. 1, 1936

'HHT EBH JAG JEE Needles:

'Account power line crossing at Homer tomorrow, September 2nd signal line will be killed at Homer signal 6011 and 6032 at Homer to and including signal 6681 and 6692 at Bagdad will be out of service from 7:30 A. M. until further advised.

Signed: E. M. W.'

* * * * *

'Goffs, December 17, 1936

'HHT JAG NW Needles:

'Signal 5971 clear on arrival found no cause for trouble.

Signed: E. M. W.'

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'Needles December 8, 1936

'Signal Maintainer—Newberry

No. 10 reports signal 6882 no light.

Signature unknown.'

'Needles, March 15, 1937

'Signal Maintainer—Goffs:

'Signal 5952 at stop for No. 8.

Signature unknown.' "

An agreement bearing date of Feb. 5, 1924, as to rules, and Jan. 1, 1928, as to rates, is in effect between the parties to the dispute.

"The carrier understands the committee's position to be that an operator should be assigned to each of these points to handle such calls as may be made in case of signal trouble or if a man is not regularly assigned an extra man should be called. In the opinion of the carrier this is neither necessary nor required and would be an unworkable arrangement. Signal trouble shows up without warning and may occur at any time during the day or night and must be corrected at once to avoid delays to trains.

"It is the position of the carrier that there has been no violation of the agreement."

OPINION OF BOARD: Article 2 (a) of the agreement has no relation to this situation and the same is true as to Article 13 referred to by the carrier. The case depends on the Scope Rule and the general principle that work of a class covered by an agreement belongs to the employees represented in such an agreement and may not be taken away and delegated to others not coming under such agreement.

With no disposition to trench on the long line of decisions sustaining these principles the Board deems them inapplicable in the instant case. It is not always easy to distinguish situations arising under the Telegraphers' Agreement involving the use of telephone for the reason that it is well known that the telephone is and has been used for many purposes independently of its use by the telegraphers. It is, of course, not even claimed that all telephone communication is subject to the Telegraphers' Agreement. In the instant case the telephone was placed in the living quarters of the signalman at Newberry over a year and a half before the telegraph station was closed and in the situation at Goffs, a month before. It should be understood that the installation of the telephone in the signalman's quarters was not for indiscriminate use but solely for the purpose of summoning him in emergency situations involving signal trouble. Signalmen under their agreement are required to hold themselves available at all times (except when excused) to be called in cases of signal trouble. Even when there was an operator located at Newberry on a day shift it might reasonably have occurred that the signalman may have been called at night on the 'phone by the dispatcher to look after some signal trouble. If there were a local 'phone between the station and his living quarters no objections could be raised to the operator at the station calling him to repeat a message of the same type from the dispatcher. In two of the instances of use of the 'phone specified in the complaint the Goffs' signalman would call the operator, one at Cadiz and the other at Needles requesting him to notify certain officials regarding certain signal conditions. It is difficult to see what difference it could make as to what station he may have called or whether he did call a station or the dispatcher direct. The communications do not become matters of record until they reach the operator or the dispatcher and relate wholly to the signalmen's work.

It is claimed by the carrier that the practice dates back as far as 1913 and no complaint has ever been made concerning it prior to this complaint, which did not arise until 1937. These stations were among those involved in Award 255, which was a complaint against the abolition of telegraph positions at various points on the road. As a result of the application of the award an agreement was entered into between the organization and the carrier Oct. 28, 1936, for the closing of the stations and the maintenance of caretakers thereat. No question was raised during the negotiations incident to this agreement concerning the use of these telephones by the signalmen.

It is well known that section foremen and other maintenance employees occasionally use box telephones located at blind sidings and other outlying locations where no operator is available for the purpose of communicating either with operators or their supervisors and this practice is not regarded as an encroachment on the Telegraphers' Agreement.

It is obvious that the installation of these telephones had nothing whatever to do with the discontinuance of the agencies at the stations named, and that an order of the Board requiring a discontinuance of the service would not result in reemployment of telegraphers as, for the limited use involved, it would

be far more economical to use commercial 'phones; indeed, if the theory was right that only telegraphers could handle the communications transacted by these signalmen it would be necessary to maintain a 24-hour shift of operators for the purpose in order to obtain the result available under the present practice. While, as stated, it is sometimes difficult to draw a line in this type of case the next succeeding award, 604, involves a situation apparently somewhat similar but calling for an opposite conclusion and it should be read in connection with this award.

The Board finds that the use of telephones by signalmen under the circumstances set forth in this case is not violative of the Telegraphers' Agreement.

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 facts of record do not show a violation of the Telegraphers' Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1938.