

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 COMPANY

**STATEMENT OF CLAIM:** "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that the receiving or transmission of communications of record is work covered by the Telegraphers' Agreement, and shall be performed by employes covered by that agreement; that the carrier has violated the Telegraphers' Schedule in requiring or permitting time-keepers or other employes not appearing on the Telegraphers' official seniority roster, to transmit messages or reports of record on the telephone."

**EMPLOYES' STATEMENT OF FACTS:** "Agreement bearing date of February 5, 1924, and August 1, 1937, as to rules of working conditions and rates of pay, respectively, exists between the parties to this dispute.

"The said agreement does not cover employes classified as extra or other gang time-keepers.

"Extra or other gang time-keepers and or other employes, whose names do not appear on the Telegraphers' Seniority roster are required and/or permitted to transmit messages, reports and/or other matters of record on the telephone from line locations to offices of the carrier.

"The following messages, reports and or other matters of record are representative:

'Bagdad, Calif. Sept. 13-37

'HHT, Needles

I would like to have permission to take trunk belonging to caretaker on push car from Bagdad to Amboy to be shipped.

Signed: Section foreman 12:15 P. M.'

'Bagdad, Calif. Sept. 11-37

'Agent, Ludlow

Bill car co. mtl AT73932 Co Switch ties Hestor to Barstow to H. L. Hoskins roadmaster

Signed: Section Foreman, 1:17 P. M.'

'Essex, Calif. December 8, 1936

'REC, HS CO., Needles  
HLH, Barstow

Please furnish 6 laborers for gang 7.

Signed: W. W. Campbell.'

"The committee claims that when the timekeepers, roadway machine operators and water service foreman used the dispatcher's telephone to call telegraph operators at an open office (open office being an office where telegraph operator is employed and on duty) giving him information to send to Needles and Barstow they violated the telegraphers' agreement, basing their claim on Article 2 (a) of agreement which reads:

'Article 2 (a)—Where existing pay-roll classification does not conform to the scope of the schedule employes performing service in the classes specified therein shall be classified in accordance therewith.'

"Article 2 (a) is a rule requiring that an employe performing service covered by the telegraphers' schedule shall be classified according to the particular class of service he is performing. It does not mean and it was never so intended that an employe using the telephone in the manner explained should be considered as performing a service that only an employe covered by the telegraphers' agreement can perform. The Carrier fully understands there are limitations to be placed on the use of telephones by other than employes covered by the telegraphers' agreement. It also understands that there is no rule in the telegraphers' agreement that prohibits the use of telephones as they were used by the timekeepers, roadway machine operator and water service foreman. Their use by these employes has not caused the taking off of any position covered by the telegraphers' agreement nor would the discontinuance of the use of the telephones cause the putting on of any such positions. The board, we are sure, will give consideration to the fact that there has been no attempt on the part of the carrier to willfully, maliciously or in any other manner take work away from employes covered by the telegraphers' agreement. The Board will please note that in each instance the dispatchers' telephone was only used to call a telegraph operator at an open office to send information they had to report.

"The Carrier wishes to direct the attention of the Board to an outstanding fact. Article 13 of the agreement reads as follows:

'No employe other than covered by the schedule 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 an emergency, in which case the telegrapher will be paid the call.'

"The restriction, it will be noted, even at a point where an operator is employed, is only against the handling of train orders. There are no restrictions even in the handling of train orders at a point where an operator is not employed and train orders are, and have been for many years, handled by employes not covered by the telegraphers' agreement at points where an operator is not employed.

"It is the position of the Carrier that the use of dispatcher's telephone by timekeepers, roadway machine operator and water service foreman at Essex, Goffs, Bagdad and Siam, all non-telegraph non-telephone stations, in the manner explained is not in violation of any rule of the telegraphers' agreement."

**OPINION OF BOARD:** This case involves the same question that was dealt with in Awards Nos. 603 and 604 of this Division. As indicated in the Opinion in Award No. 603, the principles relied upon by the Organization are in no wise questioned. It is merely a question of whether they are applicable to the practice here involved consisting in the timekeeper or foreman of extra gangs using telephone in booth at closed station to call an operator to request him to send a message concerning the work of such extra gangs. As is well known these extra gangs are not located at a particular location but move along where their work requires. It is occasionally necessary for them to contact with their superiors regarding their work. It was this type of communication that was involved. Of course, when they happen to be near an open station they have the telegrapher located there send the message. The

question was fully discussed in the two above mentioned awards, and on the whole it is considered that the facts in this case are more comparable to those involved in Award 603 than the situation involved in Award 604.

In the circumstances the Board does not consider the practice here shown to be a violation of the principles relied upon by the Organization.

**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 do not disclose a violation of the agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 6th day of May, 1938.