

Award No. 919

Docket No. TE-902

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS,

THE CHICAGO, ROCK ISLAND AND PACIFIC

THE CHICAGO, ROCK ISLAND AND GULF RYS.

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Chicago, Rock Island and Pacific Railway, that Agent-telegrapher Jeanette A. Harris, Ramona, Kansas, is entitled to a call under Article 4-(c), of the Telegraphers' Agreement, because the Section Foreman at Ramona, who is an employe not covered by said agreement, was on September 30, 1937, approximately 30 minutes before the beginning of Agent Harris' assigned tour of duty, used by the Train Dispatcher to receive a communication of record termed 'Lineup of Trains' for which service Miss Harris should have been used."

EMPLOYES' STATEMENT OF FACTS: "The Order of Railroad Telegraphers representing employes as indicated in the scope rule of the agreement with the Chicago, Rock Island and Pacific; the Chicago, Rock Island and Gulf Railway Companies, of January 1, 1928, on page 38, copies of which have been furnished to the Board, under caption, 'El Paso-Amarillo Division' shows agent-telegraph position at Ramona, Kansas. The hours of duty of the employe covering this job are 8:30 A. M. to 5:30 P. M. with one hour out for lunch. September 30, 1937, the section foreman at Ramona as usual at 8:00 A. M. used the dispatcher's telephone to secure a lineup of trains from the dispatcher for the purpose of occupying the main track to Rishel a siding 3.7 miles East of Ramona, which train lineup read:

'To Section Foreman at Ramona, No. 92 at 9:10 A. M. Passenger trains on time Local West leave Herington 11:00 A. M.'

to which was added the initials of the Chief Dispatcher, thereby performing the duties of the agent-telegrapher and causing a decrease in such employe's earnings guaranteed to him by Article 4-(c) of the agreement."

CARRIER'S STATEMENT OF FACTS: "On September 30, 1937, section foreman, having some emergency work to take care of, called the dispatcher from the blind siding at Rishel, a point where no telegrapher is employed, and secured certain information pertaining to the unloading of some material which he desired to use at Rishel. Section foreman started to work at 7 A. M., and agent's tour of duty began at 8:30 A. M."

An agreement bearing date of January 1, 1928, is in effect between the parties.

POSITION OF EMPLOYES: "It is the contention of the Telegraphers' Committee that this practice violates the agreement between the Carrier and

was on leave of absence on both September 29 and 30, 1937, his leave being for the period September 22 to October 9, 1937.

"Employees base their claim in accordance with Article 4-(c) of the Telegraphers' Agreement. This article reads as follows:

'For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis. Employees shall not be required to work more than two (2) hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes.

'Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.'

"Nothing is due under this provision because the management did not require the agent to perform work as specified therein, nor was the management required to give the agent a call. There is no article in the Telegraphers' Agreement which prohibits employees other than those covered by the Telegraphers' Agreement from securing information relative lineup of trains, etc. for use in performance of their work. No agent or telegrapher was deprived of work on the date in question because section foreman secured certain information from the dispatcher.

"It has been a practice of long standing, which practice has been considered proper, for employees to secure information as regards train movements and other data, and this has not been considered as a violation of the Telegraphers' Agreement. In the instant case, no train orders were secured or issued, but if they had been, then not even Article 1-(b) of the Telegraphers' Agreement would be violated as there are no telegraphers employed at Rishel. The section foreman is not a train or engine service employee, and we do not consider the information such as this section foreman secured on September 30, 1937, can be considered as a train order. It was merely exchange of information pertaining to immediate work at hand. No trains were advanced on basis of information which the section foreman might have secured.

"Nothing is due under Article 4-(c). The section foreman did not secure information relative train orders, but simply data in connection with his work; no agent or telegrapher was deprived of employment, and there is no article in the Telegraphers' Agreement that has been violated. Agent McGee was not even working on date in question. Claim should be denied."

OPINION OF BOARD: There is conflict in the evidence as to whether the Section Foreman called up from Ramona or from the blind siding at Rishel; the committee contending the former and the carrier the latter. If it was from Ramona it would be a clear violation of the telegrapher's right to a call. If from Rishel, whether it would be a violation of the Telegraphers' Agreement, would depend on whether it was a practice or merely occasional. See Awards 603 and 604, this Division.

The preponderance and weight of the evidence is that the call was from Ramona. The evidence concerning it is specific and the replying message is quoted verbatim. It is to the effect that the Section Foreman requested a "line-up" so he could go to Rishel. If he was already there it would be absurd to make such an inquiry. The carrier asserts the foreman called up from Rishel to secure certain information pertaining to the unloading of some material which he desired to use at Rishel. It does not attempt to furnish the messages verbatim or give the time. Both things may have occurred. Apart from this it will be observed that in the Employees' Statement it was alleged that this was a usual practice, and this is not only not

contradicted but inferentially admitted. As held in Award 604, such regular, as opposed to occasional, use also constitutes a violation of the agreement. In the circumstances it is not material whether the call was from Ramona or Rishef.

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 employes involved in this dispute are respectively carrier and employes 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

The operator is entitled to be paid as for a call.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1939.