Award No. 941
Docket No. TE-904

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, 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 on Chicago, Rock Island and Pacific Railway that, acting agent-telegrapher W. A. Vance, employed at Logan, N. M. shall be paid a call on each day of August 19, 20, 21, 23, 24, 25, and 26, 1937 in accordance with Article 4-(c), second paragraph of Telegraphers' Agreement, account foreman of extra section gang securing lineup of trains direct from the train dispatcher by means of the telephone installed on the immediate outside of the Logan telegraph office, on each of these days at about 6:30 A. M., or thirty minutes prior to the regularly assigned starting time of the telegrapher, who was studiously not called for the purpose of performing this work which is work covered by Telegraphers' Agreement."

EMPLOYES' STATEMENT OF FACTS: "The Order of Railroad Telegraphers and the Chicago, Rock Island and Pacific Railway Company and its subsidiary line, the Chicago, Rock Island and Gulf Railway Company have an agreement dated January 1, 1928, covering wages and working conditions of the employes thereon. Logan, N. M., an agent-telegraph position is listed in the wage scale on page 39 of this agreement, and the hours of duty of the agent-telegrapher August 19, 20, 21, 23, 24, 25, and 26, 1937, were from 7:00 A. M., to 4:00 P. M., with one hour out for lunch. On the dates named immediately above, an extra gang foreman who had been provided with a portable telephone set by the Carrier, at 6:30 A. M. connected his telephone to the dispatchers telephone circuit just outside of the telegraph office and copied a train lineup from the dispatcher and gave the dispatcher any information he desired regarding the extra gang work for the day."

CARRIER'S STATEMENT OF FACTS: "On August 19, 20, 21, 23, 24, 25 and 26, 1937, while extra gang was working in the vicinity of Logan, N. M., extra gang foreman secured information by telephone from the train dispatcher through use of a portable telephone set at Logan, regarding lineup of trains. On these dates W. A. Vance, relief agent at Logan, was assigned to the hours of 7:00 A. M. to 4:00 P. M. Extra gang foreman secured lineup at about 6:30 A. M. on dates shown."

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

POSITION OF EMPLOYES: "The General Committee of the Telegraphers claims this is in violation of the Telegraphers' Agreement scope rule,

not secure information regarding lineup of trains, etc. for use in performance of their work. No agent or telegrapher was deprived of work on these dates because of the information (pertaining to his own work) which the extra gang foreman secured by telephone, and although the carrier had a right to change the hours of assignment of the agent on these dates to secure the information for the extra gang foreman, we did not care to penalize the agent to that extent, and certainly the carrier should not now be penalized because it left the working conditions more favorable to the agent.

"It has been a practice, long recognized as proper on the Rock Island, for employes to secure information as regards train movements, and contention has never been made that such a practice was a violation of the Telegraphers' Agreement. In the case at hand, no train orders were issued, but if train orders are secured in emergency by other than telegraphers, such handling is covered by Article 1-(b) of the Telegraphers' Agreement. The extra gang foreman is not a train or engine service employe, and the information such as this extra gang foreman received as to lineup of trains is not a train order. It is merely an exchange of information by telephone pertaining to immediate work at hand and the information secured is not used for the advancement of any trains. The information as to arrival of trains was not secured 'at telegraph or telephone offices' but at the point where the extra gang was located.

"As recited herein, this extra gang foreman did not secure information relative to train orders, but merely data as regards lineup of trains, which information was necessary in connection with the work on which the extra gang was engaged; no agent or telegrapher was deprived of employment by the extra gang foreman securing the information by telephone and there is no article in the Telegraphers' Agreement that has been violated. Claim should be denied."

OPINION OF BOARD: This case involves the same question in principle that was dealt with in Awards Nos. 603 and 604 of this Division. In those cases opposite conclusions were reached where substantially the same thing was done under different circumstances. The question before us is whether the facts in this case are analogous to the facts in the case covered by Award 603 or to those in the case covered by Award 604.

The record in this case shows that on the dates specified in the claim an extra gang was working in the vicinity of Logan, N. Mex., relaying rails in the main track. The extra gang foreman, who had been provided with a portable telephone for use in connection with his work, about 6:30 each morning before taking the extra gang on the main line track, connected his telephone to the telephone circuit just outside the telegraph office and secured from the dispatcher at a distant office information as to the train line-up for the day and gave to the dispatcher such information as he desired regarding the extra gang work for the day. An agent-telegrapher is regularly employed at Logan with assigned hours from 7:00 A. M. to 4:00 P. M. with an hour for lunch. The claim is for a call for the agent-telegrapher on each of the days in question.

Award 603 dealt with a case where Carrier had provided telephone facilities for use by signal maintainers at stations which were non-telegraph stations at the time the dispute arose. The telephones were used solely in connection with the signal maintainer's work. The Board held this use of the telephone did not violate the Telegraphers' Agreement. The principle laid down by the Opinion in that case was followed in Award No. 645.

Award 604 dealt with a case where as a regular practice at thirteen stations on one division of a Carrier, at nine of which telegraph service was maintained but commenced at a later hour, section foreman came in on telephones located at these stations to receive simultaneously from a dispatcher a lineup on positions of trains intended to govern the movement of section

and extra gangs during the day. The Board held this use of the telephone constituted a violation of the Telegraphers' Agreement. In so doing the Board pointed up the governing distinction between cases controlled by its Award in that case and in Award 603 in the following language:

> "What has been said hereinbefore is not intended to affect the established practice of section and extra gang foremen using telephones occasionally—but not as a regular practice—at outlying points where no operator is available for the purpose of obtaining instructions and information covering their work. These cases do not fall within that category."

The principle laid down by the opinion in Award 604 was followed in Award 919—this award involving the same Carrier as is involved in the case now before the Board.

The facts in the case now before the Board are more comparable to those involved in Awards 604 and 919 than the situations involved in Awards 603 and 645. In fact, it is the opinion of the Board that Awards Nos. 604 and 919 are controlling in the instant case and to decide this case otherwise would constitute a reversal of the principle announced in those Awards and this the Board is unwilling to do except where error is definitely shown. No such showing has been made in this case.

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 Employe involved in this dispute are respectively Carrier and Employe 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 show a violation of the Telegraphers' Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of September, 1939.