

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA & SANTA FE RAILWAY CO.**

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway, that the practice of the carrier in permitting and/or requiring section foremen at closed offices where an operator is not employed, such as Baxter, Nepesta, Howell, Keller, Caddoa, Hilton, San Marcial, Grama, Lava and Cutter to regularly secure line-ups or positions of trains from the dispatcher, or by relay from telegraph or telephone offices, is in violation of the Telegraphers' Agreement and shall be discontinued."

EMPLOYES' STATEMENT OF FACTS: "An agreement bearing effective dates of December 1, 1938 as to rules and rates of pay exists between the parties to this dispute.

"The Telegraphers' schedule previously listed telegraph and/or telephone positions at each of the locations named in the Statement of Claim, except at Grama, Lava and Cutter. Those positions have since been abolished.

"The carrier permits and/or requires section foremen at the named locations to secure lineups or positions of trains regularly from the dispatcher or by relay from telegraph or telephone offices."

POSITION OF EMPLOYES: "There is now before this Board a dispute involving the same parties in which the Statement of Claim reads:

'Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka & Santa Fe Railway, that the practice of the carrier in permitting and/or requiring section foremen at closed offices where an operator is not employed, such as New Salem, Moorehead and Hilltop, to secure line-ups or positions of trains regularly from the dispatcher is in violation of the telegraphers' agreement and shall be discontinued.'

and which is identical to the instant one being a dispute on another General Manager's district. Therefore it is the desire of the organization that the *Employees' Position in that case be considered as the Employees' Position in this one*, and, in addition all arguments and rebuttals therein contained be considered as contained herein.

"The organization does however want to call attention to a most recent award (919) and for ready reference, the 'Opinion' thereof is quoted:

'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

circumstances present at the nine (9) offices of communication named in Award 604 the Carrier had departed from its stated practice. It is felt that the Board erred when they stated in the 'Opinion of Board' in Award 604 that:

'The conclusion is warranted that the object and effect of the arrangement is the evasion of the overtime and call rules of the agreement.'

for the reason that the 'Call Rule' as embodied in paragraph (c) of Article III of the respective Telegraphers' Schedules effective February 5, 1924 and December 1, 1938 provides only for the payment which shall be made when and if employes covered by those agreements are called for service and does not even by intimation require the Carrier to call them and is in no way a guarantee that work will be offered. However, Award 604 did not hold, as the Telegraphers' Organization would like to have it so construed, that the four (4) closed stations in Award 604 should be reopened as offices of communication, telegraph and/or telephone instruments installed in the depot, and a telegrapher assigned.

"In its consideration of this dispute the Board should not fail to give full recognition to the evident facts which cannot be denied by the employes, that the line-ups secured by the section foreman are not matters of record, are not train orders in any sense of the word, they carry no signature and are in no way authority for the section foreman to occupy any track or tracks. They are simply verbal advice to the foreman that he may expect certain trains and it is thereafter necessary for him to protect himself and men accordingly.

"The Board should also take cognizance of the fact that 'Blind Siding' or 'Booth' telephones such as the ones located at the stations involved herein are and have been for many years means of communication without the necessity of assigning telegraph employes, and were installed for the use of train and enginemen in cases of emergency and for use of maintenance employes in connection with their work. These telephones are not connected with the dispatchers' annunciator system and cannot therefore be rung or used by the dispatcher to contact any particular person or persons at the various points of installation, which fact in itself is evidence that these telephones were not intended for any other use than that indicated above.

"If, by the use of the words 'such as' in the Organization's claim as filed with the Board, the Organization is indicating that other stations than Baxter, Nepesta, Howell, Keller, Caddoa, Hilton, San Marcial, Grama, Lava and Cutter are involved in this claim, the Carrier protests the inclusion of any station not only not specifically named but which has not been handled with the Carrier in conference under the applicable article of the Telegraphers' Schedule governing the handling of disputes. The Carrier insists that the claim must be restricted to the ten (10) stations specifically named, viz: Baxter, Nepesta, Howell, Keller, Caddoa, Hilton, San Marcial, Grama, Lava and Cutter, and no others, the records disclosing that they are the only ones discussed with the Carrier. Award 906, Docket SG-803, is in point.

"The facts of record call for a denial of the claim."

OPINION OF BOARD: An agreement bearing effective date of December 1, 1938 as to rules and rates of pay exists between the parties to this dispute.

The Telegraphers' Schedule previously listed telegraph and/or telephone positions at each of the locations named in the Statement of Claim, except at Grama, Lava and Cutter. Those positions have since been abolished.

The carrier permits and/or requires section foremen at the named locations to secure line-ups or positions of trains regularly from the dispatcher. At Caddoa the section foreman secured the line-ups from an adjoining station.

At the time the stations at Baxter, Nepesta, Howell, Keller, Caddoa, Hilton and San Marcial were discontinued as offices of communication, telegraph and/or telephone facilities were removed from the station building at each of these locations, being relocated in booth or other type of building adjacent to the station building, since which time the carrier permits and/or requires section foremen to secure line-ups, or positions of trains, regularly from the dispatcher over the dispatcher's telephone.

It is the position of the Organization that work of a class covered by the Scope Rule of the Agreement belongs to the employees upon whose behalf the agreement was made and cannot be delegated to others without violating the agreement; that the action of the carrier in requiring section and/or extra gang foremen to regularly use the telephone for the purpose of securing line-ups and/or positions of trains (the regular recognized work of employees coming under the Telegraphers' Agreement) at the stations in question is in violation of the Telegraphers' Agreement.

It is the carrier's position that the use of the telephone by section foremen at the stations named to secure line-ups of trains is not in violation of the Telegraphers' Agreement.

Award 604 dealt with a case where, as a regular practice, at thirteen stations on one division of this carrier, at nine of which telegraph service was maintained, but commenced later in the day than when the line-ups were received, and four where there was no telegraph service, line-ups were secured by other than telegraphers. The Opinion in that case made no distinction between the nine stations where telegraph service was maintained and the four stations where no telegraph service was maintained. That Opinion held that the agreement had been violated because there was a regular established daily practice by the section foreman to secure train line-ups from the dispatcher.

In the case at bar, the stations involved are stations where no regular telegraph service is maintained, but the section foreman secures the line-ups from the dispatcher each day. It was a regular daily practice and therefore a violation of the agreement. (See Awards 919, 941 and 1024)

At Caddoa, the section foreman secured the line-ups from the adjoining station agent rather than the dispatcher. The Board thinks this is immaterial and is also a violation of the agreement, as is pointed out in the Opinion in Award No. 1283 Docket TE-1146, concurrently decided herewith.

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 there was 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 17th day of December, 1940.

Dissent to Award No. 1281—Docket TE-1141

This award is in error because it relies upon a former award, No. 604, the Opinion in which was incompletely comprehended, and upon the incomplete recognition of the facts of record rather than upon the agreement between the parties and the circumstances which surrounded the negotiation of that agreement relating to the unquestioned procedure and right of action of section foremen securing line-ups of trains in protection of their duties, and the lives of the men entrusted to their care as well as the lives of others.

The fallacy of upholding claims of Telegraphers for such inherent duties of section foremen is set forth in dissents to Awards Nos. 1261 and 1268, which dissents are hereby made a part of the dissent to the instant award.

S/ A. H. JONES
S/ C. C. COOK
S/ R. H. ALLISON
S/ C. P. DUGAN
S/ R. F. RAY