

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka & Santa Fe Railway that the carrier has not observed at Maryneal, Texas the Telegraphers' Agreement nor its Memorandum of Agreement entered into with the telegraphers October 28, 1936 by which this office was to be classified as a small non-telegraph agency; that the incumbent of the agency at Maryneal shall be classified as agent-telegrapher since October 28, 1936 and retroactively compensated accordingly."

EMPLOYES' STATEMENT OF FACTS: "There is in evidence an agreement between the parties bearing effective date of February 5, 1924 as to rules and August 1, 1937 as to rates of pay.

"By agreement between the carrier and the organization, parties hereto, the Maryneal agent-telegrapher position was incorporated in the Santa Fe Telegraphers' Schedule during 1929, rate of pay 68¢ per hour. January 1, 1932 this same position was removed from that Schedule unilaterally by the carrier, who substituted therefor a position designated as 'resident agent' by it. Award 255, National Railroad Adjustment Board, Third Division, dated May 7, 1936 caused the position to be restored to the Telegraphers' Schedule, classification and rate of pay a matter of negotiations.

"Effective November 1, 1936 by agreement the Maryneal agency was restored to the Telegraphers' Schedule as small non-telegraph, rate of pay 51¢ per hour.

"The dispatcher's telephone is located on the fourth telegraph pole west of the depot and is used daily, except Sundays and holidays, by section foremen in securing train line-ups direct from train dispatcher.

"Telegraph communications to or from Maryneal are handled via commercial Bell Telephone Maryneal and Sweetwater, thence Company facilities. The charge for each call is 20¢ except when a messenger is necessary 10¢ is added. These charges are paid by the Railway Company. The Commercial Bell Telephone is located approximately 2½ blocks from station depot."

POSITION OF EMPLOYES: "A brief back-ground or history. During 1929 the Maryneal Agency, along with other telegraph schedule positions, was acquired from the K. C. M. & O. (Orient) by the Santa Fe and incorporated in the Santa Fe Telegraphers' Schedule Agreement at a rate of 68¢ per hour. January 1, 1932 this agent-telegrapher position was arbitrarily removed from the provisions of the Telegraphers' Schedule by the carrier, who substituted therefor a Resident Agent (so designated by the carrier). By agreement between the parties to this dispute, and following that con-

organization as not requiring the establishment of a telegraph or telephone agency nor of preventing the classification to a non-telegraph agency.

"In addition to the foregoing, the employes in negotiating the Schedule effective December 1, 1938, agreed that Maryneal was properly a small non-telegraph non-telephone agency. All the facts now relevant were before them when they made that agreement. They should not be allowed to repudiate that agreement now.

"The employes have made much of the agent's use of the commercial telephone and apparently hope to thereby becloud and evade the real issues involved in the dispute. The Carrier has not denied that the agent at Maryneal used the commercial telephone on a few isolated occasions which he mistakenly considered emergencies. However, the Carrier submits that its operating officers were not aware of and had no means of ascertaining that these telephone calls, the toll charges of which amounted to a total of only \$2.60 for a ten months' period, September, 1937 to June, 1938, were made for any other purpose than to contact the Carrier's patrons since that was the purpose for which the commercial telephone had been installed. When informed that the calls were made in connection with company business, that is, for communicating with other agents or employes of the Carrier at other agencies of the Carrier, explicit instructions were issued stopping the practice (Carrier's Exhibit 'B,' and see, also, Carrier's Exhibit 'C'). What could be better evidence of the Carrier's sincerity in its desire to observe the intent and purpose of its agreements? Shall the Carrier be penalized because of the failure of its station employes to abide by instructions, especially when the employe in question would profit thereby under the Telegraphers' Schedule?

"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 one at Maryneal 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.

"A brief review of this dispute will show that the organization, without any rule in the Agreement to support its claim, is asking this Board to require the Carrier to establish at Maryneal, Texas, a position of agent-telegrapher for no other purpose than to have him secure, when necessary, a train line-up for the section foreman. All this regardless of the fact that no telegraph or telephone facilities are present in the station and no additional duties other than the securing of such line-ups will be required of the employe assigned. Further, they seek such a decision from this Board notwithstanding the fact they agreed with a full understanding of the conditions existing at that point to the classification of small non-telegraph agency at Maryneal as evidence the Memorandum of Agreement dated October 28, 1936.

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

OPINION OF BOARD: The record discloses that in the prevailing Agreement the position of agent-telegrapher at station Maryneal, Texas, was incorporated. Later—January 1, 1932, the carrier, proceeding unilaterally,

removed that position from the schedule and substituted therefor a position which it designated as "resident agent." The action of the carrier was formally challenged, and the resulting controversy came to this Division for determination. By Award 255 the challenge was sustained and the station restored to the telegraphers' schedule. The parties thereupon agreed that thereafter Maryneal station should be denominated as non-telegraph, and conducted as such. The challenge here is that the carrier has not maintained, nor is it maintaining, a non-telegraph agency at Maryneal. On the contrary, as said, the carrier transferred the company-owned telephone from the station proper to a nearby point, and that that telephone and a commercial telephone, as well, are used by the carrier acting through employees other than telegraphers in securing train line-ups and transaction of other business at Maryneal properly to be discharged, the manner considered, under the Agreement by telegraphers. The record warrants the conclusion that the above recital fairly portrays the factual situation. Predicated so the decisions are to the effect that a station so operated is telegraphic, the carrier proclaiming otherwise notwithstanding. The controlling doctrine has been developed through discussion by the Division of many Awards, a few of which we pause to cite. The following, though not exhaustive of the list, are pertinent: 604, 919, 941, 946, 851, 1018, 1024. The claim should be sustained.

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 employee involved in this dispute are respectively carrier and employee 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 carrier has violated the Agreement.

AWARD

Claim sustained, subject to provisions of Article V (i) of agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of December, 1940.

Dissent to Award Number 1303 Docket Number TE-1105

This award is in error because it relies upon former Award 604 and others, the Opinion in the first and original of which group (604) 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 1261 and 1268, which dissents are hereby made a part of the dissent to the instant award.

/s/ R. F. Ray
/s/ C. P. Dugan
/s/ A. H. Jones
/s/ C. C. Cook
/s/ R. H. Allison