

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

George E. Bushnell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Midland Valley Railroad, that the handling of train orders and receiving and transmitting of messages and reports of record by means of the telegraph or telephone (synonymous terms) is work covered by the telegraphers' agreement and shall be performed by employees under said agreement, that the Carrier in permitting or requiring the agent at Ft. Smith, which position and employee is not covered by the telegraphers' agreement, to receive from the train dispatcher by telephone at times of the day when the Ft. Smith telegraph office was closed, instructions to call the train and engine crew for an extra freight train on April 15, 16, 17, 19, 20, 22, 23, 24, and 26, 1940, violated the terms of the telegraphers' agreement, and that the telegrapher at Ft. Smith shall be allowed, under the call rule of said agreement, a call for each date specified in this claim."

EMPLOYEES' STATEMENT OF FACTS: "An agreement bearing date of March 16, 1922, as to rules and working conditions, and August 1, 1937, as to rates of pay is in effect between the parties to this dispute.

"The position of telegrapher at Ft. Smith is covered by said agreement.

"The position of agent at Ft. Smith is not covered by said agreement.

"On the dates mentioned in the claim in this dispute the carrier permitted or required the agent at Ft. Smith to receive from the train dispatcher by means of the telephone instructions to call crews and to relay this information to the Frisco Lines train dispatcher at Ft. Smith by further means of the telephone, during the portion of the day the telegrapher at Ft. Smith was not on duty, which messages and/or reports of record were made a matter of record on the carrier's train sheet for the day.

"The telegrapher at Ft. Smith claimed a call on each date this telephone service was performed by the agent at Ft. Smith who is not under the telegraphers' agreement, but these claims were declined by the carrier.

"At the time the telegraphers' agreement of March 16, 1922, was negotiated 1st, 2nd and 3rd trick telegrapher positions at Ft. Smith were negotiated into the agreement. Since this date two of these telegrapher positions have been discontinued. The remaining telegrapher position at Ft. Smith, during the period of this dispute, was assigned to a tour of duty starting at 11:00 A. M. and ending at 8:00 P. M., with one hour for meal. The telephone service performed by the agent at Ft. Smith, herein complained of, was performed during the hours 8:30 A. M. to 9:20 A. M., which were hours

"That the provisions of the agreement quoted in Paragraphs 1 and 2 recognize the right of the carrier to use the telephone 'for such conversations or verbal instructions as it may deem necessary or desirable to handle the company's business.'

"That no allegation has been made that the action complained of was other than the use of the telephone for verbal instructions.

"That such use of the telephone is in accordance with the recognized practice of the carrier for many years, in fact it was the practice at the time the agreement of March 16, 1922, was executed, also when the supplements to the agreement were executed, and it has been the practice at all times since.

"That there is no merit in the contention that there was a violation of the telegraphers' agreement and the claim should be denied."

OPINION OF BOARD: The parties are in accord as to the facts. They disagree as to whether telephonic instructions from the train dispatcher to the agent at Ft. Smith, when the telegrapher at that station was not on duty, regarding the calling of the crew of an extra freight train is a message requiring a report of record.

Under Award 1422 the handling of train orders is the work of telegraphers but it is not claimed that the communication in question is a train order.

In Award 1535, to which the carrier members dissented, we held under Award 604 that an engine watchman could not perform the duties of an agent-telegrapher in handling calls for a branch train and engine crew. We repeat what was there quoted from Award 603: "It is not always easy to distinguish situations arising under the Telegraphers' agreement involving the use of the telephone for the reason it is well known that the telephone is and has been used for many purposes independently of its use by telegraphers. It is of course not even claimed that all telephone communication is subject to the Telegraphers' agreement."

We should again follow Award 604 and resolve the dispute in favor of the employees as we did in Award 1535 except for the controlling effect on the instant facts of the award of The Board of Arbitration in Files C-755 and GC-1068 as applied in Award 940.

The claim in the instant case is based upon the same rule in the same agreement that was involved in Award 940. Harmonious administration of the Railway Labor Act requires that controlling awards be followed and the respective rights of the parties can be more satisfactorily maintained by adherence to recognized precedents. See Award 993 where it was said "Precedent must govern; logic, yield to the weight of accumulated awards."

This Division sitting without the aid of a Referee construed the Telegraphers' agreement with the Cleveland, Cincinnati, Chicago and St. Louis Railway as applied to a situation where the telephone was used to transmit messages in a far more extensive manner than in the instant case.

The Board there said:

"As shown by the record in this case, there is no rule in the Telegraphers' Agreement restricting the right of the Carrier to have employees other than those covered by that Agreement handle messages and reports over the telephone: nor any rule prohibiting telephone conversations by and between officers, dispatchers, assistant yardmasters, and/or other employees: nor prohibition of train and yard men obtaining permission from a telegrapher by telephone to use a designated track, or report when clear of same. See Awards 652 and 653."

It should be noted that Awards 652 and 653 were also rendered without the aid of a Referee.

We will not add to the length of this opinion by quoting from Awards 1078, 1102, 1145 and 1320 which are also in point.

Decision in the instant case is controlled by Award 940. It was there held that the agent at Arkansas City who with the agent at Ft. Smith was excluded from the Telegraphers' agreement by Article XXIV could perform telephonic and telegraphic service without violating the Telegraphers' agreement. Consequently the agent at Ft. Smith may receive telephonic instructions from the dispatcher as to when a train crew shall be called without subjecting the carrier to a call penalty to be paid claimant telegrapher who subsequently came on duty and who presumably handled the train orders for this crew.

The position of agent at Ft. Smith was excluded from the Telegraphers' agreement without any reservation or limitation whatever upon the kind of service that might be performed by such agent except as subsequently imposed by the supplements to the agreement. See particularly the language of Rule 16 which prevents this agent from handling train orders, a telegrapher being employed and available at Ft. Smith.

It is suggested in the carrier's brief that decision can also turn on the lack of "sufficient probative evidence of record that a message or report of record within the meaning of the Agreement in its entirety and specifically within the 1933 addition to Article II, here exists."

We do not deem it necessary, in the light of the foregoing to determine this question as the facts of record do not show any violation of the agreement.

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 or record do not show any 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 18th day of September, 1941.