**Award No. 1722**
**Docket No. TE-1681**

# NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**Carl B. Stiger, Referee**

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## PARTIES TO DISPUTE:

### THE ORDER OF RAILROAD TELEGRAPHERS

### DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

**(Wilson McCarthy and Henry Swan, Trustees)**

**STATEMENT OF CLAIM:** "Claim of the General Committee of The Order of Railroad Telegraphers, Denver & Rio Grande Western Railroad, that R. F. Rodgers, the regularly assigned telegrapher at Woodside, Utah, is entitled, under the terms of the Telegraphers' Agreement, to a call for each day since November 27, 1940, on which the section foreman at that station has been required or permitted, without calling Mr. Rodgers for that purpose and while said Rodgers was not on duty, regularly to secure from the train dispatcher, by telephone, communications of record, namely, train line-ups."

**EMPLOYES' STATEMENT OF FACTS:** The Order of Railroad Telegraphers and the Denver and Rio Grande Western Railroad Company have an agreement dated January 1, 1928, re-issue December 1, 1939, covering wages and working conditions of the employes thereon. Woodside, Utah, a telegrapher position, is listed in the wage scale on page 18 of this agreement, and the hours of duty of the telegrapher November 27, 28 and 29, 1940, were from 7:00 P. M. to 4:00 A. M. with one hour out for lunch. On the dates named immediately above, the section foreman located at Woodside copied a line-up of trains over the dispatcher's telephone located in the section house at Woodside at approximately 8:00 A. M.

**POSITION OF EMPLOYES:** This claim is predicated on our Scope Rule No. 1, also Rule 5, Overtime; and Rule 6, Call Rule, of the current agreement.

The General Committee of the telegraphers claim that the handling of the communication of record by an employe not covered by the Telegraphers' Agreement, as narrated in the Employes' Statement of Facts, is a violation of the Telegraphers' Scope Rule No. 1, also of Overtime and Call Rule Nos. 5 and 6 of that Agreement, because an employe who is not protected by the Agreement was required or permitted to perform the work of telegraphers contrary to and in violation of a written agreement assigning such duties and work to those employes protected thereby.

Under date of September 5, 1939, the following letter was directed to the Management in an effort to prevail upon them to discontinue the practice of turning our work over to employes of another craft:

"Denver, Colo.
September 5, 1939

Mr. R. F. Ray,
Assistant General Manager,
317 Equitable Bldg.
Denver, Colorado.

Dear Sir:

The practice on your railroad of transmitting line-ups by telephone direct to section foremen, section laborers and other employes

**agreement was not intended to prevent a section foreman getting his lineups by telephone. Should we hold otherwise it would be necessary to maintain a telegrapher wherever lineups are found to be necessary, and clearly such a requirement was not within the contemplation of the parties at the time the agreement was signed. In this connection we might add that the practice of which the present claim forms a part antedates by many years the presentation of any complaint or any contention that such practice constitutes a violation of the agreement.** The first complaint of the practice bears a date of September 5, 1939.

"If, as contended by Employes; no one except a telegrapher should be permitted to use the telephone to obtain train lineups from other telegraphers at stations where a telegrapher is employed, we are of the opinion that such a requirement is not to be found in the Scope Rule of the agreement but may be found only in a specific agreement of the parties of the same type as that deemed necessary in this agreement relating to train orders, and found in Rule 2 of the agreement." (Emphasis supplied.)

We wish to stress that part of the Opinion reading:

"We think it clear that the Scope Rule of this agreement was not intended to prevent a section foreman getting his lineups by telephone. Should we hold otherwise, it would be necessary to maintain a telegrapher wherever lineups are found to be necessary, and clearly such a requirement was not within the contemplation of the parties at the time the agreement was signed."

and further:

"If, as contended by Employes; no one except a telegrapher *should be permitted to use the telephone to obtain train lineups from* other telegraphers at stations where a telegrapher is employed, we are of the opinion that such a requirement is not to be found in the Scope Rule of the agreement but may be found only in a specific agreement of the parties of the same type as that deemed necessary in this agreement relating to train orders, and found in Rule 2 of the agreement."

and it might also be added that such a requirement is not only not to be found in the Scope Rule of the agreement, but may be found only in a specific agreement of the same type as that deemed necessary by the Organization when they requested and secured a new rule, in the Mediation Agreement of May 13, 1940, (Case No. A-757), relating to the handling of train orders, etc., by train and enginemen.

The Carrier's position in this case is similar to its position in claims presented to the Board ex parte by the Organization under Dockets TE-1565 and TE-1603.

The Carrier submits that a consideration of all the evidence, the previous conduct of the parties, and the practical and economic considerations bearing upon the meaning of the agreement and its application to the facts, fully sustains the Carrier's position, and respectfully requests that the claim be denied.

**OPINION OF BOARD:** This claim involves the same parties, Agreement and rules and substantially the same issues as involved in Docket No. TE-1603, Award No. 1720. For the reason stated in said award the Board holds there was a 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 record shows a violation of the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of February, 1942.

**Dissent to Award 1722—Docket TE-1681**

The Award in this case relies upon the reasoning of the Opinion in Award 1720—Docket TE-1603, and so too do we rely upon the dissent to Award 1720 as expressing our dissent to this Award.

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