

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific, Pacific Lines, that Telegrapher W. P. Shutt, Cruzatte, Oregon, Portland Division, be compensated for one call daily, December 8, 1939, to January 13, 1940, with the exception of December 21 and 25, 1939, account track walker being used to copy from the train dispatcher, line-ups on trains at 10:00 P. M. on the dates named in this claim.

EMPLOYEES' STATEMENT OF FACTS: Telegrapher W. P. Shutt, regularly assigned at Cruzatte, Oregon, Portland Division of the Southern Pacific, claims one call daily as set up in the Statement of Claim, account track walker copying line-up at 10:00 P. M. each day for which claim is filed. Telegrapher Shutt was available for call each day for which claim has been filed. The Carrier has never denied the authenticity of the claims but has declined payment of same.

POSITION OF EMPLOYEES: EXHIBITS "A" to "F" inclusive are made a part of this Brief.

The claim is filed under Rule 1 of the Telegraphers Agreement:

"RULE 1.

Scope

"This schedule will govern the employment and compensation of the following: Agents, assistant agents and ticket agents incorporated in wage schedule, agent-telegraphers, agent-telephoners, agents, small non-telegraph; block operators, car distributors (if required to telegraph in the performance of their duties), drawbridge tenders (levermen), managers, punchers, staffmen, telegraphers, telephone operators (except switchboard operators), towermen, tower and train directors and wire chiefs, and will supersede all previous schedules, agreements and rulings thereon. In application of these rules, employees covered thereby will be considered as telegraphers."

Cruzatte, at which point the claim originated, is located at Mile Post 546 from San Francisco. The track walker securing the line up patrolled the track from Mile Post 543, three miles west of Cruzatte to Mile Post 548, two miles east of Cruzatte. Cruzatte was the starting point of the patrol and of course, the line-up to be of value must be secured at that point.

Rule 1 upon which this claim is based explicitly states—

"This schedule will govern the employment and compensation of the following:"

thereafter listing the various classifications including "telegraphers, telephone operators (except switchboard operators)." When the track walker secured the line up daily, as set forth in the Statement of Claim, he was

OPINION OF BOARD: The facts which give rise to the controversy sufficiently appear in the respective positions and statements of fact so as not to require repetition here. It is to be noted that the claim is sought to be maintained under the scope rule on the theory that trackwalker's telephone conversations with the dispatcher was work belonging to claimant because he was the regularly assigned operator at Cruzatte.

This does not necessarily follow. It has been many times held that not all telephone conversations between railroad employes are subject to the telegraphers' agreement, although as pointed out in Award No. 603 it is not always easy to draw the line.

Claimant's case, to be sustainable, must at least be clear enough and strong enough to come within Award No. 604, which award most nearly approximates the situation before us, but we think Claimant fails to show a comparable situation.

In the instant case and in Award No. 604 Claimant relies on various rules and decisions of the United States Labor Board, and in 604 the committee quotes from Decision No. 757 inter alia as follows: "Thus, it is law by order and contract that employes whose duties require the transmitting and/or receiving messages, orders and/or reports of record by telephone in lieu of telegraph are properly classified as coming under the Telegraphers' schedule and such duties belong exclusively to that class." We think this is as accurate a statement as appears anywhere on the issue before us. It will be noted that before the items of work become exclusively the property of the telegraphers under the scope rule that the items must be "of record," which means that the conversations are important enough in the operation of the railroad to be made matters of the record. The best example of this is in relation to transmission of train orders.

Now the claim before us is based on "account trackwalker being used to copy*****line-ups on trains at 10 P.M. on dates named." There is nothing in the record to substantiate that statement outside of its bare assertion. The Carrier admits that part of the conversation between the train dispatcher and the trackwalker concerned the movement of trains over the track covered, but no record appears to have been made by either party.

The Employes recognized the need of the giving of the line-ups being a matter of record in Award No. 604 where "a representative copy of a line-up, carrying the signature of the trainmaster" appears. And the Opinion of the Board in Award No. 604 recites that the line-up was "made a matter of record."

It was suggested on behalf of the Claimant that, since the records are the exclusive property of the Carrier, it is not always possible for the employes to get copies of them necessary for the establishment of proof of claim. There is no allegation here such as there was in Award No. 604 that the train dispatcher "who is required to do so and make a record thereof" had a record of the alleged line-ups. If he had a record and a demand was made for it by the Claimant and the dispatcher refused to give it, this Referee would have sustained the claim if there had been proper allegation and proof of those facts.

There is another reason why a distinction is properly made between this case and that in Award No. 604, viz., in the latter, the section crew was presumably using equipment—a motor car—for transporting the employes, which made it necessary for the foreman to know the movements of the trains so as to keep the track clear. No such problem is involved in the case of this trackwalker.

Mention is made by the employes that the Carrier discontinued the practice complained of after having it called to its attention. Under some

circumstances this might be construed as an admission of liability, but it can not be so construed in light of what we have said. Liability may not be inferred where there is none.

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 employes involved in this dispute are respectively carrier and employes 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 telephone conversations of the trackwalker did not constitute the receiving of "line-ups" and, therefore, were not covered by Rule 1 (Scope Rule) 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 25th day of September, 1942.