Award No. 2090
Docket No. TE-2003

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

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 on the Denver and Rio Grande Western Railroad, that;

(1) The Carrier violated the Telegraphers' Agreement when at 7:30 A. M. on June 17, 1941, a time of the day when the telegrapher in the Chama, New Mexico telegraph office was not on duty, it used the roundhouse foreman at Chama, an employe not under said agreement, to receive a message by telephone from the train dispatcher ordering a train crew called, and that;

(2) Fred Vernon, the regularly assigned telegrapher in the Chama telegraph office, with assigned hours from 8:00 P. M. to 4:00 A. M., but who was not notified or called to perform this work, be paid for the call that was thus denied him.

EMPLOYES' STATEMENT OF FACTS: June 17, 1941, at 7:30 A. M. one of the roundhouse employes at Chama, New Mexico, received a call message on Extra 480-483 east for 8:30 A. M., direct from the train dispatcher by means of the dispatcher's telephone located in the roundhouse.

Two operators are employed at Chama with regularly assigned hours of service as follows:

M. E. Trotter, Agent-Operator,	8:30 A. M. to 4:30 P. M.
Fred Vernon, Operator,	8:00 P. M. to 4:00 A. M.

An agreement is in effect between the parties to this dispute, effective January 1, 1928, as to rules, and December 1, 1941, as to rates of pay.

POSITION OF EMPLOYES: Rules 1, 5, 6 and 14 of the Telegraphers' Agreement are applicable to this dispute and are quoted below for ready reference:

"RULE 1—SCOPE

"This Contract will govern the employment and compensation of Telegraphers, Telephone Operators (except Switchboard Operators), Agent-Telegraphers, Agent-Telephoners, Levermen, Tower and Train Directors, Block Operators, Staffmen and Agents except the positions of Agents at Denver, Colorado Springs, Pueblo, Salida, Leadville, Alamosa, Grand Junction, Salt Lake and Ogden, and will supersede all previous schedules, agreements and rules thereon."

In Statement of Claim the Employes state in part "used the roundhouse foreman at Chama, an employe not under said agreement, to receive a message by telephone." Previously the Employes have contended, which contention is contested by the Carrier, that it is a violation of the Agreement to transmit by telephone "messages and reports of record." Their statement in this case leaves the impression, by inference at least, that the message given the roundhouse foreman at Chama was a written or recorded message, which is not the case. In the instant case there was simply a telephone conversation between the dispatchers and roundhouse foreman, no written record of any kind having been made.

OPINION OF BOARD: The facts in this claim are not in dispute. At 7:30 A. M., June 17, 1941, the train dispatcher by telephone directed the roundhouse foreman at Chama, New Mexico, to call a train and engine crew for 8:30 A. M. This telephone conversation took place before the agent-operator went on duty and three and one-half hours after claimant completed his tour of duty. The claim is for a call.

Was the Scope Rule violated under these circumstances? This Board has held many times that not all conversations between railroad employes are subject to the Telegraphers' Agreement. See Awards Nos. 603, 645, 652, 653, 700, and 1983.

In the latter Award, Judge Norris C. Bakke said:

> "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 matter of the record. The best example of this is in relation to transmissions of train orders."

There was no record made of the conversation in question by the roundhouse foreman.

If there could be any doubt about this conclusion, it would have to be resolved against the claimant because the record shows it was the practice for the dispatchers to call by telephone the Mechanical Department forces for call crews at the time the current agreement was executed January 1, 1928. (See Award No. 2070.)

The claim should be denied.

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 there was no violation of the current agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1943.