

Award Number 3116
Docket Number TE-3093

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware, Lackawanna & Western Railroad, that the first trick Clerk-Operator, O. L. Chadwick, at Norwich, New York, be paid a "call" for April 19 and 29 and May 3, 4, 5 and 11, 1944, account a signal maintainer not under the Telegraphers' Agreement securing a line-up similar to a train order at Norwich direct from the train dispatcher on the morning of each of these days by means of the telephone before the said first trick Clerk-Operator, O. L. Chadwick, came on duty.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Prior to April 1, 1944, twenty-four (24) hour telegraph service was maintained at Norwich, New York. By company bulletin No. 1148, dated March 31, 1944, the third trick Clerk-Operator position, 11 p.m. to 7 a.m., was abolished, effective April 1, 1944. Thereafter telegraph service was maintained 7 a.m. to 11 p.m. only

On April 19 and 29 and May 3, 4, 5 and 11, 1944, train line-ups were transmitted directly from the train dispatcher to signal maintainers (persons not under the Telegraphers' Agreement) at Norwich around six o'clock each morning just prior to the commencing time of the first trick Clerk-Operator assigned.

The claimant, Mr. Chadwick, maintains a telephone in his home, has complied with Operating Rule No. 743, and was available for "call" service on each of the dates involved.

POSITION OF EMPLOYEES: As indicated in the Employees' Statement of Facts, prior to April 1, 1944, twenty-four (24) hour telegraph service was maintained at Norwich. Effective April 1, 1944, the third trick Clerk-Operator position, which position had theretofore been assigned to handle all telegraph (telegraph and telephone synonymous) communications, was abolished by the Carrier.

Following are the train line-ups which were transmitted by train dispatchers to signal maintainers at Norwich on the dates involved in the claim:

Other Organizations: 196, 405, 481, 615, 635, 782, 806, 877, 890, 947, 948, 1038, 1050, 1116, 1134, 1149, 1217, 1383, 1405, 1406, 1418, 1435, 1458, 1484, 1519, 1554, 1593, 1656, 1694, 1695, 1708, 1841, 1849, 1894, 1991, 1999, 2010, 2011, 2041, 2042, 2089, 2090, 2091, 2121, 2133, 2134, 2138, 2145, 2326, 2334, 2350, 2351, 2353, 2375, 2379, 2449, 2492, 2493, 2548, 2551, 2552, 2576, 2597, 2685, 2693, 2641, 2674, 2676, 2735.

The claim should be denied.

OPINION OF BOARD: This is a companion case to TE-3089, Award No. 3114. Although this case involves train line-ups and not train orders as in 3089, what we there said with reference to the work of copying train orders by employes not within the agreement, applies with equal force here in connection with the recording of train line-ups.

There is the additional circumstance in this case, however, that there was discussion on the property with reference to the question of whether there was a violation of the Agreement. On appeal to the Chief Operating Officer, Carrier's decision was as follows:

"As advised you at conference April 13 arrangements had been made whereby M. of W. employes will obtain information regarding train movements through employes covered by the Scope of the Telegraphers' Agreement except in a possible emergency that cannot be anticipated and other arrangements made."

In dealing with the same subject matter at other locations, Carrier seems to have conceded that this work belongs to employes covered by the scope of the Agreement as is indicated by several communications issued by Superintendent Diegtel and Chief Train Dispatcher O'Boyle which are set forth in detail in Employes' Exparte Submission.

The letter of Superintendent Diegtel to the General Chairman, O.R.T. is particularly significant. It reads:

"Referring to your letter of January 7, 1945, with reference to our conference of March 13 regarding the handling of track car line-ups at Danville, Bloomsburg, Berwick, Shickshinny, Kingsley, North Brookfield, Oxford, Greene, Whitney Point and Marathon.

"The general practice of permitting maintenance of way employes to obtain line-ups through other than the regular station forces within the scope of the telegraphers' agreement is not authorized.

"At the conference I advised you that immediately action would be taken at certain of these stations. Further investigation of the others has now been completed, and track car operators at all of the stations mentioned above now have definite instructions to secure their line-ups from regular station forces. It should be understood, however, that the occasional use of the telephone by section or extra gang foremen in emergency to obtain instructions and information concerning their work does not constitute a violation of the intent of your agreement.

Claimant maintained a telephone in his home, and was available for the call on the dates specified in the claim.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of February, 1946.