

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware, Lackawanna & Western Railroad Company, that the ticket-clerk-operator at Berwick, Pa., shall be paid for a call on each day since commencing with April 23, 1945, on which date the Carrier, in violation of the terms of the Telegraphers' Agreement, required or permitted the section foreman stationed at Berwick to secure line-ups at Berwick direct from the train dispatcher and/or from the agent-operator at Shickshinny, Pa., by means of the telephone before the ticket-clerk-operator at Berwick comes on duty.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of May 1, 1940 as to rules and December 27, 1943 as to rates of pay, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The stations of Shickshinny and Berwick are located on that segment of the Carrier's lines reaching from Scranton to the north and Northumberland to the south. Shickshinny is located at M. P. 167.5 and Berwick at M. P. 178.4.

Previously, communication service (two clerk-operator positions) was maintained at Berwick 6:00 A. M., to 10:00 P. M., two 8-hour shifts. Presently, only one clerk-operator position is maintained, hours of service 3:00 P. M. to 12 o'clock Midnight, with one hour out for meal. This station also employs a supervisory agent, not now covered by the Telegraphers' Agreement.

At Shickshinny, previously and presently, communications service is maintained 7:30 A. M. to 7 P. M. (one agent-operator position and one clerk-operator position.)

Telegraphic train line-ups are directed to section foremen by train dispatchers on days said foremen are working, generally around 7:00 A. M. Such train line-ups for Joe Dodge, section foreman, stationed at Berwick, Pa., are transmitted, beginning April 23, 1945, by train dispatcher to agent-operator at Shickshinny, thence by telephone directly to Dodge at Berwick at a time the ticket-clerk-operator at that location is off duty; this circuitous route and improper practice to avoid "call" payments to said ticket-clerk-operator.

POSITION OF EMPLOYES: Prior to July 25, 1944 the Organization by its General Chairman learned that section foremen were securing tele-

between motor car operators and train dispatchers. The present claim, however, applies in all instances to the provision of line-ups to motor car operators by employees subject to the Agreement. No adequate grounds appear for extending the determination of Award 604 to the situation here involved; and the dictum in Award 942, where the claim was denied because of a cut-off rule and the question on the merits received no independent consideration, can not be held to be controlling in the disposition of this proceeding.

"It must be concluded, therefore, that under the circumstances of this case—including the character and development of the relevant rules and the established practice of the carrier in the handling of line-ups—there has been no violation of the Agreement."

While the above decisions completely dispose of the claim, and therefore the availability of Dalto is not important, the Carrier desires to point out to the Board that Dalto, the claimant, is not available for calls. As this Board said in Award 3115, in denying a claim asserted on behalf of this some gentleman:

"The employee (Dalto) in the instant case lives approximately one and one-half miles from the office where he is employed (Berwick) and has no telephone in his home. True, employee asserts that he had previously been called on a neighbor's 'phone, but the possibilities of delay in carrier attempting to reach employee through this method are obvious."

"Claim denied."

In conclusion, the Carrier desires to point out that the claim was not handled on the Property in accordance with the requirements of *E. J. & E. Ry. vs. Burley*, 325 U. S. 711, no proof of any agency to represent any specific claimant having been submitted to the Carrier by the Organization, and the Board lacks jurisdiction to entertain the claim.

OPINION OF BOARD: The record establishes that on or about April 23, 1945, the Carrier issued instructions that the Dispatcher would transmit the line-ups to the Operator at Shickshinny, Pa., and he would relay them to the Section Foreman at Berwick, Pa. There is a record of track car line-ups, and the foreman repeats the line-ups back to the Operator. These records are retained by the Carrier. One Clerk-Operator position is maintained at Berwick; hours of service 3:00 P. M. to 12:00 o'clock midnight. Telegraphic train line-ups are directed to section foremen on days they are working between 7:00 and 8:00 A. M., in the manner heretofore described, when the Clerk-Operator at Berwick is off duty. The Claimant contends this procedure violates Rule 1 of the Scope Agreement, and Rule 5—the Call Rule—and also Rule 12 (a). We deem it unnecessary to set out these rules—they appear in the Employees' submission.

The question presented is whether or not the Section Foreman has the right to obtain the line-ups by receiving the same over the telephone from an employee covered by the Telegraphers' Agreement.

Awards 1145, 1305, 1320 and 1553 of this Division support the Carrier's contention that under the circumstances of this case there is no violation of the Scope Rule Agreement.

In Award 1320, the claim applied to the use of the telephone by motor car operators in securing line-ups from telegraph operators. The claim was denied, and there was held to be no violation of the Agreement. In this award, this Board said:

"We think it clear that the Scope Rule of this Agreement was not intended to prevent a section foreman getting his line-ups by telephone. Should we hold otherwise it would be necessary to maintain a telegrapher wherever line-ups 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. * * *

"If, as contended by Employees; no one except a telegrapher should be permitted to use the telephone to obtain train line-ups 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."

In Award 1305, the Section Foreman used a telephone to secure train line-ups from a Telegraph Operator. It appeared as it did in Award 1145, that the information was obtained by the Section Foreman for his own use, and on this phase of the case, this Board held that Award 1145 governed.

In Award 1320, the facts were identical, so far as the controlling principles are concerned, with those in Award 1145.

In Award 1320, the opinion seeks to distinguish the controlling facts in Award 1145 and Award 604, the distinction being that in Award 604, the Telegraphers were eliminated entirely from the work of receiving the line-ups from train dispatchers and transmitting them to motor car operators.

Award 604 held that extra gang foremen allowed to use the telephone in securing line-ups for the positions of trains from the train dispatcher was in violation of the Scope Rule Agreement and constituted an evasion of the Overtime and Call Rules of the Agreement. It will be noted in Award 604 that the subject matter deals with obtaining line-ups from train dispatchers as distinguished from Award 1145, where the motor car operators used a telephone to secure line-ups from telegraph operators.

In Award 1283, this Board held in principle that there was no distinction between Awards 604 and 1145, but declared the weight of authority of the awards of this Board sustained Award 604 and should be followed. The case involved the claim of an agent-operator at Pauline, Kansas, where the carrier permitted the section foreman to call the Second Tower Telegraph station at Topeka, Kansas, and receive the line-ups at a time when the agent-operator was off duty. Award 1283, in effect, overruled Award 1145.

Award 1553 dealt with the problem of the carrier requiring and permitting section foremen operators of motor cars * * * to receive, by the use of the telephone, line-ups to govern the movement of motor cars, the claim being that telegraphers who were available to perform this work should be paid in accordance with the Scope Rule Agreement. It held as follows:

"We, therefore, hold that it is not a violation of the Telegraphers' Agreement for a section foreman or operator of a motor car to secure line-ups from a telegraph operator by use of the telephone, nor is it a violation thereof for him to copy such line-up so received for his use out on the line, even though the line-up form provides space for certain information. This is for the use of the Carrier and the form is not required by any rule of the Agreement. The operator is required to copy the line-ups on the form, 'One copy to be delivered to the person in charge of motor car and one copy kept on file.'"

The proceeding with reference to the line-up is not much different than the record kept by the Carrier in the instant case.

Award 1671 presented the question of whether it was proper for a section foreman to copy line-ups of trains over the telephone direct from a

dispatcher as a regular practice, at a time when a telegrapher is not on duty. In keeping with Award 604 and a number of other awards on the same subject, the claim was sustained. In Award 1671, this Board said:

"There remains to be considered the possible effect on this case of Award 1320, involving the same parties as those now before us, and the same question except that there, the section foreman obtained the line-ups through a telegrapher instead of directly from the dispatcher. It was held that this was permissible, following Award 1145 which dealt with a similar situation. Award 1283 had in effect overruled Award 1145, by holding that there was no distinction between obtaining line-ups from a telegrapher as intermediary and obtaining them directly from the dispatcher; that, therefore, it was necessary to choose between following Award 1145 or Award 604, and that Award 604 should be followed because of the number of cases which had already followed it. Award 1320, we take it, in turn overruled Award 1283 by holding that the two situations were in fact distinct and that Award 1145 was sound and applicable. * * * Award 1320 merely went back to Award 1145 and restored it; that neither Award 1320 nor 1145 purported to overrule Award 604; * * * that this distinction could soundly be made; and that Award 1553, the latest case to uphold the distinction, clearly also supports the principle of Award 604."

In view of the continuity of the awards of this Board since Award 1283, and the fact that Awards 1305, 1320 and 1553 adhere to Award 1145, we conclude that Awards 1145, 1305, 1320, and 1553 govern in the type of case before us and therefore deny 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 Employees involved in this dispute are respectively carrier and employees 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 agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1946.