

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE PITTSBURGH & WEST VIRGINIA RAILWAY
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Pittsburgh & West Virginia Railway Company:

1. That the Carrier violated the scope rule of the Telegraphers' Agreement when, on March 19, 20, 21, 22, 23, 27, 28, 29 and 30, 1946, it permitted or required the conductor of work train extra engine 910 to receive and copy train orders direct from the train dispatcher by the use of the telephone at the Monessen, Pa., station for the movement of his own train on each of these days before the regularly assigned agent-telephoner J. F. Polen at this station came on duty without making any effort to call agent-telephoner Polen to perform this work which is work covered by the scope rule of said agreement and for which agent-telephoner Polen was available and subject to call under the rules of the Telegraphers' Agreement; and

2. That agent-telephoner Polen shall be paid for a call under the provisions of Article III-(c) of the Telegraphers' Agreement for each of the above mentioned days on which he was thus deprived of performing this work by this improper act of the Carrier.

EMPLOYES' STATEMENT OF FACT: An agreement bearing date November 22, 1946, as to rates of pay, is in effect between the parties to this dispute.

The position of agent-telephoner at Monessen, Pa., is covered by said agreement. The claimant, J. F. Polen, is regularly assigned to this position, with hours 10:30 A.M. to 6:30 P.M.—eight consecutive hours—in accordance with Article III-(a) of said Agreement, it being a two-shift office in which a telephoner under said Agreement is maintained with hours 6:30 P.M. to 2:30 A.M. No telephoner is maintained at this office between the hours of 2:30 A.M. and 10:30 A.M.

Positions of agent-telephoner and telephoner are embraced by the scope rule of said Agreement, the duties of which include the performance of telephone service for the handling of all telephone communications of record at their particular offices.

Between the hours of 2:30 A.M. and 10:30 A.M. on March 19, 20, 21, 22, 23, 27, 28, 29 and 30, 1946, at times when agent-telephoner J. F. Polen was not on duty and subject to call under Article III-(c) of said Agreement, the

The claimant takes the position that he was off duty but subject to call and available. The Carrier cannot state that this man was not available as it has never required Operators, before or after their regular tour of duty, to be available, and as such would have no knowledge as to the availability of Operator Polen. Certainly there is nothing in our Agreement which requires these men to be subject to call.

The Carrier feels that this case should be decided by giving recognition to the disclosed meaning of the immediately involved Agreement instead of generality of inferences from extraneous agreements, circumstances and decisions thereupon.

OPINION OF BOARD: The Claimant is regularly assigned as Agent-Telephoner at Monessen, Pa., with hours 10:30 A.M. to 6:30 P.M. A second trick telephoner is assigned with hours 6:30 P.M. to 2:30 A.M. It being a two-shift office, no telephoner was assigned between 2:30 A.M. and 10:30 A.M. On the days specified in the claim, the Carrier required the Conductor of Engine 910 to receive and copy train orders direct from the Train Dispatcher by telephone at Monessen for the movement of his own train. Claimant contends that this work belonged to the Telegraphers and that he should have been called to perform it under the Call Rule. Carrier contends that the work is not exclusively Telegraphers' work under the scope rule of their Agreement and, there being no Train Order rule in the Agreement making it such, there was no violation of the Agreement.

This precise question has been fully answered in Award 3114 wherein it is said that the absence of a Train Order rule in the Agreement does not authorize train orders to be written by employees not under the Agreement. The work belongs to the Telegraphers by virtue of the Scope Rule. We adhere to the reasoning of that Award.

The contention is advanced by the Organization that Telegraphers are subject to call under the Call Rule, Article III-(c), current Agreement and Operating Rule 806. The latter rule provides:

"Offices will not be closed or operators go to meals until authority is given by the Train Dispatcher. Before leaving a notice will be placed on the window where it can be plainly read from the outside, showing where the operator can be found."

We do not think Telegraphers are held subject to call in the usual sense of that term. Their activities during unassigned hours are in no manner restricted. They are no doubt subject to call as any employee may be but not subject to discipline if not found. But in the present case, Claimant had a telephone in his home. His address and phone number were on file with the Train Dispatcher. His phone number and residence address were posted near the telephone that the Conductor was obliged to use. Claimant was available for the work. The Carrier simply made no attempt to call him to perform it. This constitutes a violation of the Agreement.

Carrier shows that it had been a common practice for many years before the Telegraphers' Agreement was negotiated, to permit employees not covered by that Agreement to copy train orders. The practice seems to have been continued for ten years thereafter with the continued acquiescence of the Organization. This does not defeat an affirmative award in the present case, but it does place the parties under the rule announced in Award 3518, Docket CL-3466, with reference to its retroactive effect.

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 the Agreement was violated as charged.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 11th day of April, 1947.