

Award No. 3522

Docket No. TE-3490

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 that the Carrier violated the terms of the scope rule of the Telegraphers' Agreement, when, on February 4, 1946, it permitted or required the conductor of engine 914, an employe not under said Agreement, to copy train order No. 3 at Longview, Pa., at a time (1:55 A.M.) by means of the telephone when agent-telephoner J. P. Verno, regularly assigned to this station, was not on duty but subject to call and available; and that J. P. Verno shall be paid for a call under the provisions of Article III-(c) of the Telegraphers' Agreement of which he was deprived by this improper act of the Carrier.

EMPLOYES' STATEMENT OF FACT: An agreement bearing date November 1, 1936, as to rules of working conditions, and May 22, 1946, as to rates of pay, is in effect between the parties to this dispute.

The station at Longview, Pa., was a two-shift train order office at the time this dispute arose. The claimant, J. P. Verno, was regularly assigned to the agent-telephoner position at this station, hours 9:00 A.M. to 5:00 P.M. A second trick telephoner, hours 5:00 P.M. to 1:00 A.M. was also regularly assigned at this station but the incumbent is not involved in this dispute.

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.

At 1:55 A.M. on February 4, 1946, at a time when agent-telephoner Verno was not on duty but subject to call under Article III-(a) of said Agreement, the Carrier permitted or required the conductor of engine 914 to receive and copy train order No. 3 direct from the train dispatcher by the use of the telephone at the Longview station for the movement of his own train.

Agent-telephoner Verno was readily available for call on the day involved for the purpose of performing this telephone service at his station, but was not called by the Carrier.

POSITION OF EMPLOYES: The following quoted rules of the prevailing telegraphers' Agreement are invoked in this case of dispute:

"Article I. Scope. The following rules and rates of pay shall govern compensation, hours of service and working conditions of Tele-

Operators who are off duty are not required by our current Agreement to hold themselves in readiness for a call, nor does the Carrier have knowledge as to their availability.

POSITION OF THE CARRIER: We understand that this claim is based on an alleged violation by the Carrier of the terms of the Scope Rule of the Telegraphers' Agreement. We quote below "the Scope Rule," which is Article I in the current Agreement.

"The following rules and rates of pay shall govern compensation, hours of service and working conditions of Telegraphers, Telephoners, Operators (except Switchboard Operators), Agents, Agent Telegraphers, Agent Telephoners, Towermen, Levermen and Block Operators listed in Wage Schedule, hereinafter referred to as 'employees'."

Certainly there is nothing in the above Scope Rule which guarantees to Operators the exclusive right to copy Train Orders. In the instant case the Train Order copied by the Conductor was incidental to the movement of his train.

In many of the cases involving Operators and Train Orders which have been before your Board, the Telegraphers' Agreement includes a rule which, in effect, states:—"Handling of Train Orders. No employe other than covered by this schedule and Train Dispatchers will be permitted to handle Train Orders at Telegraph or Telephone Offices where an Operator is employed, can be promptly located and is available, except in emergency, in which case the Telegrapher will be notified and paid for the call."

The Agreement between this Carrier and the Telegraphers does not include such a paragraph. It is obvious that there is no violation of Article I (Scope Rule) and, hence, claim for a call under Article III-(c) cannot be sustained.

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, after their regular tour of duty, to be available, and as such would have no knowledge as to the availability of Operator Verno. 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 Longview, Pa., with hours 9:00 A.M. to 5:00 P.M. A second trick telephoner is assigned with hours 5:00 P.M. to 1:00 A.M. It being a two-shift office, no telephoner was assigned 1:00 A.M. to 9:00 A.M. On the day specified in the claim, the Carrier required the conductor of Engine 914 to receive and copy a train order direct from the Train Dispatcher by telephone at Longview 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.

The facts in this case are similar and the principles involved are identical with those in Award 3521, TE-3489. The claim is sustained for the reasons stated in that Award.

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 Agreement was violated as charged.

AWARD

Claim 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.