Award No. 3604

Docket No. TE-3502

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Seaboard Air Line Railway, that the following named agent-operators be paid for a call at their respective stations under Rule 8 of the Telegraphers' Agreement on each day on which section foremen copied lineups direct from the train dispatcher by the use of the telephone at the stations where these agent-operators were regularly assigned and outside of their assigned hours of duty.

D. W. Young, Agent-Operator, Ohatchee, Ala.,
December 14, 1945, through January 14, 1946.
W. D. Bolton, Agent-Operator, Lawrenceville, Ga.
December 14, 1945, through January 12, 1946.
D. S. May, Agent-Operator, Calhoun Falls, S. C.
December 17, 1945, through January 17, 1946.
E. Walton, Agent-Operator, Wattsville, Ala.,
December 14, 1945, through January 12, 1946.
B. T. Mears, Agent-Operator, Cross Hill, S. C.,
December 7, 1945, through January 12, 1946.
J. W. Hancock, Agent-Operator, Carlisle, S. C.,
December 7, 1945, through January 12, 1946.
J. H. Payne, Agent-Operator, Odenville, Ala.,
December 14, 1945, through January 14, 1946.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of October 1, 1944, as to rules and working conditions is in effect between the parties to this dispute.

We quote from an exchange of letters on the subject of the involved claims:

"Cordele, Ga., April 22, 1946.

"Mr. J. C. Wroton, General Manager,
Seaboard Air Line Railway,
Norfolk, Va.

"Dear Sir:

"Regret it becomes necessary to appeal to your office in the matter of the following claims:

"D. W.Young, Ohatchee, Ala., 24 calls December 14 to January 14
W. D. Bolton, Lawrenceville, Ga., 24 calls December 14 to January 12

it would be best not to aggravate this situation but instructed our line of road forces to rearrange, where practicable, the hours of telegraphers and section foremen so that the operators could copy the morning lineups. Within thirty-eight (38) days from the time that we received the General Chairman's notice that we should either have operators copy the morning lineups or expect claims from the telegraphers, at all points listed in the claims now before your Honorable Board, slight adjustments were made in the hours of the assignments so that each of the complainant operators could copy the morning lineups. Certainly, we corrected the condition which has brought about these claims as quickly as reasonable for us to do so. You will not that one of the claims was made on December 7th, 1945, which is two days before we received notice that the Organization would no longer go along with the practice of having section foremen copy morning lineups. All of the other claims, except one, began five days after we received notice.

In conclusion, we wish to point out that there are no specific rules that can be quoted by the Committee as supporting their contention that the matter of copying morning lineups is work that belongs exclusively to telegraphers. Neither is there a rule in the Agreement that says that operators will be paid a call when employes not covered by the scope of their agreement perform such work. We do have a rule that provides for payment of a call to an operator when an employe not covered by the scope of the Telegraphers' Agreement copies a train order. If it were the intention that operators be allowed a call when section foremen copy lineups, why wasn't it necessary that this be covered in the same manner as the matter of employes outside the scope of the Agreement copying train orders? When Awards 604 and 919 were rendered, sustaining the claim of the operators for a call account of employes not covered by the scope of the Telegraphers' Agreement copying morning lineups, why did the employes on this property not assert any rights that they might have had at that time? Was it because they recognized that these awards were not in accordance with the agreements between the parties and would force an unreasonable hardship on the carrier. If so, they acquiesced in the practice of which they now complain by virtue of the fact that they felt that the supporting awards were not proper or did they acquiesce in this practice simply because they did not know of Awards 604 and 919? The answer to this question is that they pressed a claim and collected a claim which was brought about as result of an extra gang foreman copying morning lineup, and the sole basis for their claim was the decision as rendered in Award 604. In view of the fact that at that time we had several hundred section foremen copying lineups each and every morning, was it not proper that this carrier assumed, since they made no protest of this practice, that they acquiesced in the practice?

We firmly believe that had we continued to have section foremen copy morning lineups, your Honorable Board would not have sustained any claim made as a result thereof for the reason that the Organization over a long period of time acquiesced in this practice—they acquiesced in this practice for a long period of time after awards in their favor had been issued. We ask that you decline these claims simply on the basis that the carrier should be given a reasonable length of time in which to change or adjust a working condition that had existed on the property for thirty years or more.

In closing we again repeat that there is no rule in the agreement that provides that operators be allowed a "call" under such circumstances. We have always understood that if we do not have a rule in effect providing for a penalty payment when an agreement is violated that we are only required to reimburse the employes affected for any loss sustained. In each of the instances involved in this dispute the section foreman copied the morning lineup just a few minutes before the operator was scheduled to go on duty. Therefore, at most, the only loss sustained was pay from the time the lineups were copied until the scheduled starting time of the operators.

OPINION OF BOARD: It had been the practice on this carrier for more than thirty years for section foremen before commencing their day's work to get train line-ups from the dispatcher. In 1938, a dispute

arose regarding an extra gang foreman getting a line-up from the dispatcher. This claim was settled but upon the basis as stated in Carrier's letter of August 21, 1939, "that such payment on our part would not be considered in any way affecting the long practice of Section Foremen securing daily lineups." Thereafter no complaint was made regarding the practice of having section foremen obtain lineups and no attempt was made to have it obviated at the time the 1944 agreement was negotiated. It was not until December 7, 1945, as shown by the letter in the record, that employes insisted that the practice be discontinued, and in so doing referred to Award 2934, which had then just recently been decided. The carrier acceded to this request and by January 17, 1946, had completed changing hours of assignment to the end that section foremen were no longer required to obtain the lineups from the dispatchers. The claims here presented relate to the period of time between December 7, 1945, and January 17, 1946.

In view of the long established practice existing on this carrier and in view of the fact that after the settlement of the extra gang foreman claim in 1939 the employes did nothing with reference to asserting its alleged rights relating to section foremen until December 1945, we believe carrier was justified in assuming that employes did not seriously question its right to have the section foremen obtain the lineups. We think it only equitable, therefore, that carrier should have a reasonable time to correct this practice after it is seriously questioned by employes. We cannot hold that from December 7, 1945, to January 17, 1946, constitutes an unreasonable length of time. See Award 2278. Although not an identical situation to that in Award 1671, the present facts show a situation somewhat similar and there this Division refused to allow reparations for past violations.

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 is no basis for an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1947.