

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph L. Miller, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**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, that the agent-operator at Waterville, N. Y., shall be paid a call under Rule 5 of the telegraphers' agreement on each day May 10 and 11, 1946, of which he was improperly deprived because a section foreman, an employe not under the telegraphers' agreement was permitted or required by the Carrier, in violation of the terms of said agreement, to copy a line-up of train movements on each of these days at Waterville from the agent-operator at Richfield Junction station by means of the telephone before the agent-operator at Waterville came on duty.

EMPLOYES' STATEMENT OF FACTS: An agreement, hereinafter referred to as the telegraphers' agreement, by and between the parties bearing effective date of May 1, 1940 as to rules governing working conditions and May 22, 1946 as to rates of pay is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Prior to May 10, 1946, Waterville employed two telegraph employes, an agent-operator, assigned hours 6:30 A. M. to 2:30 P. M., and one clerk-operator, assigned hours 11:00 A. M. to 7:00 P. M. One of the duties of the agent-operator each morning shortly after 6:30 A. M., except Sundays, was to receive and deliver to the section foreman and the signal maintainer a line-up of train movements.

Effective May 10, 1946, the clerk-operator position was abolished and the agent-operator's assignment changed to 8:30 A. M. to 5:30 P. M. with a one-hour meal period 12:30 P. M. to 1:30 P. M.

On May 10, 1946, Section Foreman Lagone, with headquarters at Waterville, was required or permitted to copy via commercial telephone from the agent-operator at Richfield Junction, a distant station, before the agent-operator at Waterville was assigned to begin work, the following train line-ups which originated with the train dispatcher on duty:

"Lagone, Waterville by Fone.

"Binghamton, May 10, 1946
6:40 A. M.

"BUX 462 departed Chenango Forks 607 A. M.

UBX called Utica 630 A. M. goes to R Springs for milk.

Richfield Local X called Utica 830 A. M.

Rich Springs Roustabout called Norwich 7 A. M. works between
Sherburne and Greene.

(s) F. D."

3. The Carrier deliberately adopted this circuitous method of transmitting a train line-up to an outsider for the express purpose of denying to the agent at Waterville work which belongs to him by practice and contract.
4. The Carrier's denial of the claim, in view of the agreement and already-cut patterns, is indefensible.

CARRIER'S STATEMENT OF FACTS: At Waterville, N. Y. on May 10 and 11, 1946, the hours of the Agent-Operator were 8:30 A. M. to 5:30 P. M., one hour for lunch. No other employe was on duty at that station. Agent-Operator W. G. Collins has no telephone at his home.

Richfield Junction is approximately six (6) miles from Waterville. Richfield Junction is a two track office. The hours of the Agent-Operator are 6:00 A. M. to 2:00 P. M. The hours of the Clerk-Operator are 2:00 P. M. to 10:00 P. M.

Section Foreman Langone lives at Waterville. On the dates in question he called the Agent-Operator at Richfield Junction for a line up of train movements. Richfield Junction was the nearest open telegraph office at the time his request was made.

The Chief Dispatcher's records show that on May 10 and 11, 1946, line-ups of train movements were transmitted to Foreman Langone through Leo Dwyer, Agent-Operator, at Richfield Junction at 6:35 A. M. on May 10 and 6:40 A. M. on May 11.

POSITION OF CARRIER: There was no violation of the agreement, since the line-up was transmitted to Foreman Langone through an employe covered by the Telegraphers' agreement.

It is unnecessary to elaborate on the position of the Carrier, in view of the following admission of the Local Chairman in presenting the claim:

"I hold copies of two track car line-ups which were furnished to track foreman Langone at Waterville by the Operator at Richfield Junction * * *." (Emphasis supplied.)

(Local Chairman Chadwick to Superintendent Diegtel, May 18, 1946).

This admission disposes of the case and requires denial of the claim.

Nothing in the agreement prevents a track foreman from getting his line-up over the telephone from an operator covered by the agreement. It was so held by this Board in Award 3363 (Decided December 16, 1946). In that case, the Board denied a similar claim arising on this Property under the identical agreement relied upon by the Organization in this case.

In view of the admission of the Organization, Award 3363 controls and the claim should be denied.

OPINION OF BOARD: Much is made of precedent in this case, especially since this Board (sitting with Referee Messmore) on December 16, 1946, decided in favor of this same Carrier with a claim before it based on a similar set of facts.

Each side presented a long list of opinions and awards in justification of its position. And well they might! For this Board a number of times has rules each way in similar, even if not exactly corresponding cases.

The Board in this case has sifted the cited opinions and awards with a view to retaining before it only those with similar facts. From these the Board attempted to discover whether there has been any marked continuity of thought in them. It could not find any. Referee Swacker wrote an opinion in 1938 which set a pattern in the Organization's favor. Award 604. This lasted only until Referee Sharfman reversed it in 1940. Award 1145. Later that same year Referee Tipton returned to the Swacker position. Awards 1281, 1282, 1283 and 1284. Less than a month later, wholly dis-

regarding Tipton's opinion and returning to Referee Sharfman for "precedent", Referee Rudolph held for the Carrier. Award 1320. Referee McHaney and Bakke followed with opinions for Carriers; then the Organization got two from Referee Douglas and Youngdahl. Awards 1553, 1983, 2934 and 3116. After the Youngdahl opinion came that by Referee Messmore which we are asked to reverse.

The Board wishes to emphasize that it does not consider all the facts in the above cited cases to be the same, or even exactly corresponding, to those before us. It does feel, however, that the cases are nearly enough like the instant one to indicate the Board's thinking on the issue involved. It finds no pattern of thought, no continuity of thought that would bind the Board to any past award or series of awards. Award 3670.

Therefore, we must set the facts in the dispute against the agreement, and find whether there has been any violation. It must then rule upon the Carrier's claim. It has no duty to follow past awards in the instant case, even though its last award in a similar issue, as did its next-to-last, happened to involve this same Carrier.

We reach the conclusion above with due consideration of the fact that the last two cases cited involved this same Carrier. Awards 3116 and 3363. The facts in those two cases were just enough different that the cases might be said to be different, in the eyes of this Carrier, and therefore the awards not inconsistent. This Carrier, then, if it looked only to those awards on this issue dealing only with its own employees, might well argue that the pattern had been set as far as it was concerned and that a decision against it in the case at hand would be arbitrary and perhaps capricious. If this Board were umpiring grievances for the Organization and this Carrier alone, that argument might be given considerable weight. This Board, however, serves as the umpire for the Organization and many Carriers. It follows that whatever weight is given to previous awards must be drawn from all previous awards on cases with corresponding sets of facts.

II

Rule 1 of the Agreement provides:

"SCOPE. Effective May 1, 1940, the following rules and working conditions will apply to telegraphers, telephone operators (except switchboard operators); Agents, as shown in the rate schedule; Assistant Agents; Agent-telegraphers and Agent-telephoners; towermen, levermen, tower and train directors, wire-chiefs, Managers of telegraph offices and operators of mechanical telegraph machines installed for the purpose of replacing telegraph communication, hereinafter referred to as employees."

The facts in the case before us are as follows:

Prior to May 10, 1946, the Carrier employed at Waterville, N. Y., two operators whose work fell within the "Scope Rule" quoted above. The first, and agent-operator, was scheduled to work from 6:30 A. M. to 2:30 P. M.; the second, a clerk-operator, from 11:00 A. M. to 7:00 P. M. Effective May 10 the latter position was abolished and the former's hours changed to 8:30 A. M.-5:30 P. M., an hour for lunch. One of the agent-operator's early morning duties was to receive and deliver to the section foreman and signal maintainer a line-up of the day's train movements for their guidance. On May 10 and 11, when there was no operator on duty to take the lineups, Section Foreman Lagone, with headquarters in Waterville, got them by outside phone from the agent-operator at Richfield Junction. As of May 12, the agent-operator was assigned to work from 6:30 A. M. to 5:30 P. M., one hour for lunch, presumably to permit him again to receive and deliver the train line-ups. At a later date the clerk-operator's job was restored and the old schedule revived.

The Organization claims a violation of Rule 1 and, consequently, a claim for a "call" (Rule 5) for the agent-operator for each day of violation (May 10, 11).

Was the receipt of line-ups work belonging to the telegrapher under Rule 1? We think it was in this case.

The Carrier itself apparently concedes that sending out line-ups was operator's work. Superintendent Diegtel has been quoted as telling the Organization that "the general practice of permitting maintenance of way employes to obtain line-ups through other than the regular forces within the Scope of the Telegraphers' Agreement is not authorized." Award 3116.

Train line-ups are matters of record for the Carrier at the point of transmission and they are kept on file at the point of receipt when received by an operator. Their receipt and delivery to the appropriate parties was solely the work of operators before the telephone began to replace the telegraph. Although we have said many times that the use of the telephone is not to be confined to operators, we believe it is the intent of the Scope Rule to continue to give to operators the transmission (including the receipt) of matters of record, at least when operators are readily available. There was an operator readily available in the instant case. He lived only a short distance from the station. A card in the station window showed where he could be reached. There was no emergency.

In view of these facts we will hold for the Organization. We wish to emphasize that we are setting the facts in this case against Rule 1 and that, with any variance in the facts, especially those noted in the preceding paragraph, we might have held differently.

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 Carrier violated the Agreement as indicated in the Opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of October, 1947.

DISSENT TO AWARD 3671, DOCKET TE-3603

There is no rule of Agreement between the parties that prohibits a section foreman from receiving a line-up over the telephone direct from a telegrapher—Awards 1145, 1305, 1320, 1553, 3363. The latter award involves these same parties. The Opinion states, "It finds no pattern of thought, no continuity of thought that would bind the Board to any past award or series of awards." To reach such a conclusion it was necessary to include awards dealing with direct communication with the train dispatcher. Distinguishment was made in the above-mentioned awards, and failure of such distinguishment, plus the absence of any rule to support the conclusion here reached, is clearly in error.

/s/ C. P. Dugan
/s/ R. F. Ray
/s/ A. H. Jones
/s/ R. H. Allison
/s/ C. C. Cook