

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, 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 and Western Railroad Company, that J. R. Finnan, Jr., regularly assigned agent-operator at Factoryville, Pennsylvania, hours 7:00 A. M. to 4:00 P. M. with one hour allowed for meals, shall be paid for a "call" on July 6, 1946, account Section Foreman C. Titus copying a line-up at Factoryville Station direct from the train dispatcher, or by relay through an adjacent telegraph office, by means of the telephone at 6:48 A. M. on July 6, 1946, before agent-operator 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 and May 22, 1946, as to rates of pay is in evidence; copies thereof are on file with the National Railroad Adjustment Board. The working hours of the agent-operator at Factoryville are 7:00 A. M. to 4:00 P. M. with one hour out for lunch.

On July 6, 1946, at 6:48 A. M. Section Foreman Titus at Factoryville was required or permitted by the Carrier to copy a train line-up which read:

"SB-11 Extra left Scranton 5:40 A. M.
HB-5 Deadheader 1243-1633 called Scranton 7:30 A. M.
Extra 602 called 6:00 A. M. train from Hampton Hump."

This train line-up was dated Scranton, addressed to C. Titus, Factoryville and signed by F. Diegtel, Superintendent.

The Organization for Agent-Operator J. R. Finnan, filed claim for a "call" payment under Rule 5, as the result of a violation of Rules 1 and 12 (a). The Carrier denied the claim.

POSITION OF EMPLOYES: The facts in this proceeding are simple, and, in view of the majority of previous decisions in somewhat similar instances, an award should be equally as simple. In the morning of July 6, 1946, Foreman Titus, at Factoryville, at 6:48 A. M., exactly twelve minutes before the agent-operator came on duty, contacted the train dispatcher, on the dispatcher's telephone, and requested a train line-up. The train dispatcher, aware of the result, demurred, but did in accordance with Carrier's instructions, resort to a circuitous route in an effort to circumvent a "call" payment to the agent-operator. The Organization understands the Carrier

plated by the Scope Rule. If it should be so construed we would be well on our way to absurdity. * * *

"The contentions of the Organization attempt to draw too fine a line * * *."

It will be seen from Finan's own statement that he considered it a "due hardship" to reach Factoryville by 7:00 A. M. Obviously, to reach that point at 6:48 A. M. would require taking an even earlier bus.

These practical considerations must not be overlooked on the question of availability. However, since Award 3363 disposes of the claim, this factor was simply an additional reason for denying the claim.

OPINION OF BOARD: The facts here are not in dispute. J. R. Finnan, Jr., was the regularly assigned agent-operator at Factoryville, Pennsylvania. His assigned hours were from 7:00 A. M. to 4:00 P. M. with one hour for meals. At 6:48 A. M., July 6, 1946, which was before Finnan came on duty, and at a time when no telegrapher was on duty at Factoryville, Section Foreman C. Titus received and copied a line-up at Factoryville. The line-up was given by the dispatcher to the telegrapher at adjacent Clarks Summit who in turn telephoned it to Titus. The line-up was the following:

"SB-11 Extra left Scranton 5:40 A. M.
HB-5 Deadheader 1243-1633 called Scranton 7:30 A. M.
Extra 602 called 6:00 A. M. train from Hampton Hump."

The Organization contends that Finnan was entitled under the controlling agreement to a call to receive the line-up, and for failure to receive such he is entitled to pay as if he had been called. It contends, of course, that it was improper and a violation of the agreement for Titus to receive and copy the line-up.

The provisions of the agreement relied upon by the Organization to sustain its position are the following:

"Rule 1—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, wirechiefs, Managers of telegraph offices and operators of mechanical telegraph machines installed for the purpose of replacing telegraph communication, hereinafter referred to as employees."

"Rule 5—CALL RULE. Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

"Rule 12 (a). Where existing payroll classification does not conform to Rule 1, employes performing service in the classes specified therein shall be classified in accordance therewith."

That the receipt of and copying the line-up in question is work covered by the agreement there can be no question. That the section foremen was not covered by the agreement and had no rights under it is also true.

Disputes such as this one have been before this Division on numerous previous occasions and in the decisions they have received varied treatment. Some of them have been diametrically opposed and some departed from others not so radically. The parties involved are, as is apparent from the submissions and the briefs, familiar with these decisions so therefore it seems that a review of them here would serve no useful purpose, but would only extend this opinion interminably and unreasonably. This is not to say that the opinions have not been examined and no weight given to them. They

have been examined and careful consideration given to the views which have controlled them. It seems that here the opinion should be limited to the viewpoint adopted with the reasons therefor.

Therefore, the conclusion is that the claim presented and the evidence in support of it sustain the contention that the rules have been violated and that an award should be made favorable to the claimant.

Here was a violation of the agreement because the Scope Rule gave this work to those covered by the agreement. It was nonetheless a violation because others than those covered by the agreement may at times and under certain conditions use telephones, or because the line-up was communicated by the dispatcher to an adjacent telegrapher and by him relayed to the section foreman.

This was a transportation communication pertaining to control over transportation movements properly to be handled by those presumed by the positions occupied to have fitness and ability to handle such communications. Communications in control of transportation may not be conferred on another class or craft on the general theory that others than the members of the communication class may use the telephone. We are not forgetting that departures may be permissible in cases of emergency but emergency is not recognizable here.

The theory that agreement violation was avoided by relay through an adjacent telegrapher is not convincing. It was the receiving by the foreman and not the sending of which complaint was made. If it was a violation to receive from the dispatcher no reason is observable why receiving from an adjacent telegrapher was any the less a violation.

Up to this point effort has been made to demonstrate technically why this was a violation of the agreement. It may not be amiss in the light of the Division's precedents to point out that it is thought and why, that this interpretation conforms to good reasoning.

The hazards of railroad operation are great and what may appear at the time to be inconsequential departures from established regulations and practices often result in expensive and horrifying consequences. Carriers have the right to exact rigid adherence to established regulations and practices, and to discipline for failure of adherence by employes, to the end that such consequences as have been mentioned may be avoided. Employes have a corresponding right to exact that the carriers will not in violation of regulations and practices exact of them performances or that they refrain from performance of their proper functions in a manner the result of which may be disaster or the discrediting of employes in their positions.

This class is charged with responsibility for transmission of communications for transportation movements, sending and receiving. Before one may become a member of the class the Carrier of course demands demonstration of fitness and ability, and should be satisfied with nothing less. It has that demonstrated fitness and ability, in the members of this class, but does not have in section foremen.

Again, it does not seem any more than a proper regard for the interests of the Carrier, the public and the employes themselves for the employes to exact that the communications transmitted by them shall be received only into the hands of persons known to have fitness and ability to receive them.

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 claim has been sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of April, 1948.

DISSENT TO AWARD 3881. DOCKET TE-3880

The issue of procurement of line-up of trains has been before this Division in many cases in the past ten years, and the preponderance of decision has been that when secured from telegraphers, there has been no violation of the Telegraphers' Agreement.

The failure to give distinguishment to former awards by this Division is indicated in the statement of the Opinion reading, "If it was a violation to receive from the dispatcher no reason is observable why receiving from an adjacent telegrapher was any the less a violation." In view of prior awards on this issue, such arbitrary declaration was not warranted.

The Opinion of the Board presumes incorrectly that the line-up of trains given in this case was a communication pertaining to control over transportation movements. It was not. The "line-up" was not given to trains and did not in any way control their movements; it simply informed the Section Foreman as to the location of trains at the time specified. It did not restrict the movement of trains or confer any rights, as related to train movements, in the operation of the motor car. The declaration that the line-up pertained to control over transportation movements is not warranted by the facts.

The further reference in the Opinion to the hazards of railroad operation, and the apparent fear that a decision of this character is needed to add to the existing protection against such hazards, shows lack of understanding of the governing rules and actual operations.

Any award based on misconception or lack of understanding of facts, is harmful and unwarranted. The long accepted safe and satisfactory practice under existing Agreements required denial of the claim.

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