

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
GULF, MOBILE & OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad Company, that the employes of the Carrier located at the stations named below and occupying the positions classified, shall be paid one call under Rule 4 of the agreement in effect, for each day except Sundays and Holidays, beginning on the dates listed below in connection with each station, and continuing as long as the practice obtains, that employes of the Carrier other than those employees represented by this organization were and are permitted to copy line-ups by means of the telephone, in each case prior to the starting time of the claimant on each of such days covered by the claim.

Reform Agent-Operator—W. L. Adams..or his relief—Dec. 11, 1945
Macon Operator —L. M. Ballard..or his relief—Dec. 5, 1945
Columbus Tkt.Agt.Oprtr. —J. R. Watson..or his relief—Dec. 7, 1945
Prattville Agent-Operator—W. H. Boykin..or his relief—Dec. 10, 1945
Gordo Agent-Operator—F. E. Randle..or his relief—Dec. 17, 1945
Billingsley Agent-Operator—L. M. Dalton..or his relief—Dec. 4, 1945
Maplesville Agent-Operator—F. D. Cowan...or his relief—Dec. 7, 1945
Bethel Springs.. Agent-Operator—J. C. Walker...or his relief—June 17, 1946
West Point Operator —J. L. Albright..or his relief—Jan. 2, 1946

EMPLOYES' STATEMENT OF FACTS: An agreement in effect between the parties to this dispute having an effective date of March 1, 1929, as to rules covering working conditions, amended as to rates of pay at various times since March 1, 1929.

Employes occupying positions designated in the statement of claim at the station named have a starting time as follows:

	STARTING TIME
Reform	8:00 A. M.
Macon	8:00 A. M.
Columbus	7:30 A. M.
Prattville	8:00 A. M.
Gordo	7:00 A. M.
Billingsley	8:00 A. M.
Maplesville	8:00 A. M.
Bethel Springs	8:00 A. M.
West Point	8:00 A. M.

At each of the stations named the Section Foreman secured or secures a line up direct from the Train Dispatcher, which is used by the Section Foreman for the protection of himself and crew against the movement of trains.

(b) Decision No. 119 of the United States Railroad Labor Board was well known to those who negotiated the 1923 agreement and all provisions of the agreement were accepted in the light of that knowledge.

(c) The Northern and Southern Divisions of Carrier (then operated by the Mobile and Ohio Railroad Company) was NOT a party to Decision No. 757 of the United States Labor Board, and, therefore, that Decision is not applicable.

(d) The applicable agreement was negotiated and consummated by the independent action of representatives of the employees and carrier interested therein.

2. While a number of Findings and Awards have been made by the National Railroad Adjustment Board in claims growing out of circumstances related to "line-ups", in each case the applicable scope rule was substantially the same as was provided by Supplement No. 13 or Decision No. 757, and, consequently, the conclusions stated therein cannot be lightly accepted as proper for application under the provisions of the agreement here involved which contains a scope rule which is quite different from that which was provided by Supplement No. 13 or Decision No. 757.

3. The provisions of the applicable Telegraphers' Agreement have never been interpreted by the United States Labor Board or the National Railroad Adjustment Board.

4. The instant claims should be decided by the provisions of the applicable Telegraphers' Agreement, and not be grouped with similar claims that arose under agreements having unlike scope, as the latter procedure would bring about the application of general principles which the present Committee desires but which were not contemplated by nor provided for by the preceding Committees which negotiated and consummated the agreement.

5. Under the provisions of the applicable Telegraphers' Agreement,

(a) Receiving a line-up by telephone, under the circumstances related, is not work to which claimants had an exclusive right under the scope rule, and,

(b) Receiving a line-up by telephone is not "telephoning in connection with the movement of trains."

6. The instant claims are not justified by the provisions of the applicable Telegraphers' Agreement.

For the reasons given, the Carrier prays that your Honorable Board deny the instant claims.

OPINION OF BOARD: Petitioner here makes claims for calls for the telegraph operators at the stations listed in the claim because Carrier permitted Section Foremen to secure line-ups directly from the Train Dispatcher by telephone. The foremen at each station secured the line-ups before the time the operators reported for duty in the morning.

The same situation was considered in Award 604 which held that permitting foremen to obtain line-ups by telephone directly from the dispatcher instead of through a telegrapher amounted to removing work belonging to telegraphers from the scope of their Agreement, and thus constituted a violation thereof. This principle has been followed by subsequent awards involving similar conditions. Cf. Awards 1283, 1671, 2934, 3116.

Award 3363 follows awards where the foremen received the line-ups not directly from the dispatchers but from telegraphers who had previously received them from the dispatcher, as was the case in Awards 1145 and 1320. The essential difference on which the latter two awards turned was found in the fact the local telegrapher was not eliminated in the procedure of transmitting the line-ups from a dispatcher to a foreman but served as middleman. Accordingly, no work was removed from the scope of the Agreement.

In the instant claim, however, Carrier contends that the principle announced in Award 604 and the awards which followed it is not applicable here because of a difference in the wording of the scope rule.

The applicable agreement is the one made with the Mobile and Ohio R. R. Co. effective March 1, 1929. There we find:

ARTICLE I

Defining Employees Included

"(a) The following rules and rates of pay shall apply to all telegraphers, telephone operators (except switchboard operators), agents, assistant agents, ticket agents, assistant ticket agents, agent-telegraphers, agent-telephoners, towermen, levermen, block operators and staffmen, specified in wage scale, who shall hereinafter be referred to as employees, coming within the meaning of this agreement."

"(c) No employees, other than those covered by this agreement and train dispatchers, shall be required or permitted to do telegraphing or telephoning in connection with the movement of trains, except in bona fide emergency cases."

It will be noted that the employees covered by the Agreement are only those "specified in the wage scale." This appears to be a limitation not found in other Agreements.

Because of this limitation, Carrier argues that the subject of the agreement was "positions" not "work", and concludes: "Thus the scope rule cannot be said to cover any specific work and thereby make the work belong exclusively to the employees upon whose behalf the agreement was made." Carrier contends this conclusion is substantiated by paragraph (c) which expressly gave exclusive right to such work only "in connection with the movement of trains."

We cannot agree with this argument. The scope rules considered in those cases where similar claims were upheld did not in express words provide that employees thereunder had the exclusive right to the class of work thereby dealt with.

It has been said in awards of this Division that the contract of employment is almost universally unwritten. Agreements are merely subordinate rules governing generally the conditions of employment. And unless there is an express exception found in the Agreement, then the contract of employment must be deemed to embrace all of the work in the field involved. This construction of the intent and implied meaning of the scope rule has been long and firmly settled.

We do not find in the Agreement before us any express exception of any of the work ordinarily understood as being peculiar to telegraphers.

Agreements usually cover in general terms all positions and then expressly except specified ones. This agreement reverses the common procedure. It specifies each position covered, so contains no excepted positions. Even so, it may not be contended that an employee belonging to another organization may properly perform the class of work customarily belonging to the positions specified. To permit such practice is to remove work from the scope of the Agreement.

Although the claim must be sustained we believe, because of the long-existing practice on this Carrier and because of what was apparently considered as conflict in the awards on this subject, employees are not entitled to recover retroactive payments in this case. Cf. Awards 1671, 3604.

Accordingly the claim is sustained but without reparation.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim sustained without reparation in conformity with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1948.