

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
LOUISIANA & ARKANSAS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Louisiana & Arkansas Railway Company, that the Carrier violated the terms of the prevailing telegraphers' agreement, when, on Sunday, July 6, 1947, it permitted or required an employe not covered by the telegraphers' agreement at New Orleans, La., to perform communication of record service by telephone within the established week-day hours of the first trick telegrapher at that point, on which day, (Sunday), the first trick telegrapher was not on duty but subject to call; and that, A. J. Blanchard, the first trick telegrapher at New Orleans, shall be compensated for three hours at the rate of time and one-half in accordance with Section 2, second paragraph, of the Rest Day Rule of the telegraphers' agreement, because of the communication of record service performed by telephone on that day by an employe not under the said agreement.

EMPLOYES' STATEMENT OF FACT: An agreement bearing date July 1, 1942, supplemented by the Rest Day Rule effective March 1, 1945, as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

The telegraph office at New Orleans, La., is a three trick position office (around the clock) on week-days. On Sundays the first trick telegrapher position was discontinued, blanking this position between the hours of 8:00 A. M. and 4:00 P. M.

For several Sundays previous to July 6, 1947, a train had been run out of New Orleans, instructions being transmitted to all concerned to that effect on **Saturday**. In this particular case the operator at New Orleans received the usual message on Saturday, July 5, 1947, reading:

"Shreveport 7-5-47

MLT CFH Extra 253 North—SUNDAY

CFH call an engine crew to handle eng 253 light to Baton Rouge tomorrow as soon as it is OK. Hold it for yard service. Use the fireman on work train Monday and deadhead the engineer back to New Orleans unless he is needed as conductor on work train unloading Co ties Monday. Joint All G-5-21

FCG—248 p.m."

On Sunday, July 6, 1947, it was decided to change the above instructions and run a full crew train in order to move some sugar to Gramercy. The Chief Dispatcher contacted the Trainmaster at New Orleans via telephone and issued instructions as follows at 11:10 A. M.:

No telegrapher was deprived of work because of this conversation. Nothing contained in the Telegraphers' schedule is intended to prevent such a conversation at any time and under any circumstances between supervisors or officers. The acting Chief Dispatcher did not transmit the message in the form in which it was later sent and received by telegraphers; neither did the Terminal Trainmaster receive it in that form. The conversation which took place was the ordinary form of telephone conversation which takes place daily between officers. It could easily have taken place between these two officers even had Operator Blanchard been on duty at the time, and later confirmed by written message as was done in this instance.

The amount of money involved in this particular claim is small. Ordinarily the "nuisance value" of a claim for such an insignificant amount would perhaps justify the carrier in paying it. But the principle involved is so far-reaching and so important in the ordinary every-day conduct of business, that it cannot be so lightly disposed of.

Considerable correspondence has passed between General Chairman Ward and the undersigned concerning this claim. Copies of all of the letters passing between us are attached hereto as Carrier's Exhibits, and made a part of Position of Carrier. Throughout this correspondence the Organization has frequently alluded to "matters of record" and has left the definite impression that, according to their contention, any telephone conversation concerning a "matter of record" must be performed by telegraphers. We, very definitely, cannot subscribe to any such interpretation of the telegraphers' agreement for the obvious reason that the use of the telephone would thereby be circumscribed to the extent that almost any telephone conversation on company business could be considered a violation of that agreement if performed by anyone except employees covered by the Telegraphers' scope rule.

The second trick operator, coming on duty at 4:00 P.M., copied the confirming telegram, copied the train orders for and issued the necessary instructions to the crew of engine 253. Therefore, no work was removed from the performance by employees covered by the Scope of the Telegraphers' schedule.

The claim should be denied.

(Exhibits not Reproduced.)

OPINION OF BOARD: In the telegraph office at New Orleans, Louisiana, three telegraphers work around the clock on week days. On Sundays, the first trick telegrapher position, 8:00 A.M. to 4:00 P.M., was discontinued. For several Sundays prior to July 6, 1947, a train had been run out of New Orleans on instructions sent the day before. On July 6, 1947, it was deemed advisable to change the instructions given on Saturday. The Chief Dispatcher at Shreveport called the Trainmaster at New Orleans by telephone on Sunday at 11:10 A.M., cancelled the instructions previously given on Saturday and gave new ones in their stead. At 4:18 P.M., the second trick operator transmitted the new instructions to the Trainmaster at New Orleans by telegraph. The instructions therein contained had already been carried out pursuant to the telephone instructions previously given. The transmittal by the second trick operator was nothing more than a confirmation of the instructions previously given by telephone. The Organization contends that the Agreement was violated when an employee not covered by the Telegraphers' Agreement was permitted to transmit a communication of record by telephone.

It has been determined by numerous awards of this Division that the transmitting or receiving of messages, orders or reports of record by telephone in lieu of telegraph constitutes work within the Telegraphers' Agreement and belong to telegraphers exclusively. Awards 3199, 3397. The instructions sent by telephone in the present case fall within the class designated as "messages, orders or reports of record" and constituted work belonging to the telegraphers. Consequently, claimant is entitled to be paid for a

call pursuant to the terms of the second paragraph of Section 2, Rest Day Rule, effective March 1, 1945.

The Carrier asserts that the rule was complied with when the second trick operator sent the message confirming the instructions previously given by telephone. We think not. The transmission of instructions given over the telephone directing the train movement, crew consist and train make-up was clearly the work of telegraphers. The violation is not cured by directing a telegrapher at a later time to send a confirmation of the instructions by telegraph.

The Carrier asserts that a sustaining of the present claim is tantamount to a holding that any telephone conversation pertaining to company business must be transmitted by a telegrapher. No such result follows. The development of the telephone and the subsequent expansion of its use in the operation of railroad have brought about serious difficulties in the interpretation of applicable Agreements. The use now made of the telephone was not contemplated when the Agreements were made. When the Telegraphers' Agreement was first made, it was not contemplated that the telephone would largely supersede the telegraph. But on the other hand, work was reserved to the telegraphers and, if the contention now advanced by the Carrier were to obtain, the work of telegraphers would amount to little or nothing. In the absence of the negotiation of new Agreements to meet these fundamental changes brought about by the increased use of the telephone, this Board was called upon to interpret the Agreement in the light of these new conditions. In so doing, it has been held by numerous awards of this Division that telegraphers did not fall heir to all telephone work because it largely supplanted the telegraph, but that a logical interpretation of the Agreement and the evident intent of the parties when the Agreement was made, was that the transmission of messages, orders or reports of record was the work of telegraphers whether transmitted by telegraph or telephone. It may be conceded that this disposition may bring about seemingly illogical conflicts but the remedy is by negotiation. This Board, whatever its views thereon may be, is not empowered to rewrite the Agreements made. It is our function to enforce the Agreements as it has been interpreted until changes are made by the parties themselves.

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

That the parties waived oral 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of December, 1948.