

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, INDIANAPOLIS & LOUISVILLE
RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Indianapolis and Louisville Railway that telegrapher B. Tharpe, employed at Wallace Junction, be paid a call of two hours at rate of time and one-half in accordance with the terms of the Telegraphers' Agreement because the Carrier, in violation of the terms of the Telegraphers' Agreement, required or permitted Section Foreman Sims and Section Laborer Murphy at, or about 7:05 A. M., November 7, 1947, to perform work at Wallace Junction covered by the Telegraphers' Agreement, consisting of the patching of telephone wires and copying a train line up from the agent-telegrapher at Gosport by means of the telephone, at a time when no telegrapher was on duty at Wallace Junction.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of July 1, 1929, is in effect between the parties to this dispute.

In the wage scale of this agreement, at page 19, the following positions are listed:

Wallace Jct.	Agent and Telg'r.
Wallace Jct.	2nd trick Telg'r.
Wallace Jct.	3rd trick Telg'r.

A number of changes have since been made in these positions, and at the time the present claim arose only two telegraphers were employed at Wallace Junction, as follows:

Agent-telegrapher	9:00 A. M. to 5:00 P. M. daily ex. Sunday
2nd trick telegrapher....	7:00 P. M. to 3:00 A. M. daily ex. Sunday

The station of Wallace Junction is located 74 miles south of Lafayette, Indiana, on the main line of the Chicago, Indianapolis and Louisville Railway, at a point where the I. & L. Branch, extending 47.1 miles to Victoria, diverges from the main line. The station of Midland is located on the I. & L. Branch at a distance of 42 miles from Wallace Junction. The station of Gosport is located on the main line 9.9 miles south of Wallace Junction.

Communication on the I. & L. Branch is afforded by a Morse telegraph circuit and a telephone circuit. When the Branch telephone circuit is used to communicate with a point on the main line it is necessary to connect, or patch, the Branch telephone circuit to the main line telephone circuit. Facilities for the patching of these wires, consisting of two jack boxes and

operator requesting it, whether in person or over the telephone, over the signature of the telegraph operator. It is not given over the signature of the Chief Dispatcher, as in the case of a train order. The information given does not supersede nor confer any right. No train receives the information, in fact, so far as the operation of trains is concerned, the information furnished the motor car operators might never exist.

The so-called "patching of telephone wires" consisted of throwing a switch which, as heretofore stated, required one second. In his letter dated January 16, 1948, (Carrier's Exhibit "E"), General Chairman Whitehouse says "It is our position that all of the work of patching, testing and balancing of telephone and telegraph wires except such work performed by linemen and/or maintainers incidental to their work of installing and/or repairing such lines, belongs to employees covered by the telegraphers' agreement, and cannot be delegated to others without violating the agreement." The rules of the current agreement do not provide that the "patching, testing and balancing of telephone and telegraph wires" is the exclusive work of telegraphers. The throwing of this switch can by no stretch of imagination be considered as "patching." Mr. Lingle, a lineman was talking with section foreman at Wallace Junction and when he completed his conversation requested the section foreman to throw the switch in order that Mr. Raider, a roadway supervisor, might talk with a section foreman located on the Midland branch.

If, as contended by the organization, no one except a telegrapher should be permitted to "patch a telephone wire," then beyond any question of doubt there would be a specific rule, as that deemed necessary for train orders (Rule 6-B, and special agreement dated July 15, 1944), cleaning batteries (Rule 13-A), cleaning stations (Rule 13-B), handling switchlights (Rule 14-A), caring for semaphore lights (Rule 14-C).

THE CARRIER HOLDS:

1. The agreement was not violated.
2. The scope rule (1-A) and the call rule (7-C) have bearing in the case.
3. Nothing in the agreement prevents a motor car operator from getting his line up over the telephone from an operator covered by the agreement.
4. Motor car operators are not performing work that was allocated to telegraph operators, therefore, telegraph operators have not been deprived of work which they performed prior to installation of telephones.
5. The so-called "patching" of telephone wires is not work that was allocated to telegraph operators.
6. The request of the employees is for a new rule.

(Exhibits not Reproduced.)

OPINION OF BOARD: Except for that part of the claim relating to the alleged "patching" of telephone wires by Section Foreman Sims at Wallace Junction, Indiana, on November 7, 1947, this record involves practically the same issues as Award No. 4265 and Award No. 4266. On the authority of those Awards the issue pertaining to the use of the telephone in obtaining train lineups must be resolved against the Petitioner.

As to the "patching" incident the Carrier asserts that the key to its office at Wallace Junction by which the Section Foreman gained access to the equipment here involved was obtained from the Agent-Telegrapher to enable the Foreman to build fires and sweep out the office. The Carrier says the key was repossessed by it as soon as the Division Trainmaster discovered that it was in the hands of the Section Foreman.

It appears that the alleged "patching" with which we are here concerned was accomplished by pushing the plugs in the jack boxes so as to

connect the branch telephone line with the main line. There was no "patching" of the wires according to the popular understanding of that term. The petitioner has called our attention to Award No. 3524 where it was held that "testing, patching and balancing is work belonging exclusively to the telegraphers, when it is incidental to and done in connection with lines, either telegraph or telephone, in performing work belonging to the telegraphers under their Agreement." This holding is not helpful to us, however, in view of the fact that the Carrier has disclaimed knowledge of the fact that the Section Foreman had access to its building and in light of the further fact that we have already concluded that the use of the telephone by the Foreman to obtain train lineups was not a violation of the Agreement under the circumstances of this case. In our opinion the petitioner has not established a violation of the Agreement with respect to the "patching" incident referred to in the claim. An isolated and unauthorized single incident is not sufficient to establish a violation of the Agreement.

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 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of January, 1949.