

Award No. 4320
Docket No. TE-4341

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Minneapolis, St. Paul & Sault Ste. Marie Railroad Company, that the agent-telegrapher at Ottertail, Minnesota, shall be paid a call under Section 2 of the Rest Day Rule, of the Telegraphers' Agreement on Sunday, December 7, 1947, 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 the Telegraphers' Agreement, to copy a lineup of train movements on that day at Ottertail from the operator-towerman at Detroit Lakes Tower by means of the telephone at a time when the agent-telegrapher at Ottertail was not on duty.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date September 1, 1944, as to rates of pay and working conditions is in effect between the parties to this dispute.

Ottertail is a one-man station under the said Telegraphers' Agreement. The agent-operator at Ottertail station is assigned to week-day hours 7:45 A. M. to 4:45 P. M., and is not assigned to work on Sundays but is subject to call on Sundays to perform work of his position covered by the Telegraphers' Agreement.

On Sunday, December 7, 1947, the section foreman stationed at Ottertail, an employe not under the Telegraphers' Agreement, was required to patrol his section due to severe weather conditions.

Prior to commencing the inspection trip the section foreman copied a lineup at 8:30 A. M. at Ottertail by commercial telephone from the operator-towerman at Detroit Lakes tower, an adjoining open telegraph office, instead of calling the agent-operator at Ottertail station to perform this work for which he was subject to call.

Claim for a call promptly filed by the agent-operator was rejected by the Carrier.

POSITION OF EMPLOYES: The following rules of the Telegraphers' Agreement are invoked in this case of dispute:

"Article 1, Scope. For positions held by

Telegraphers
Telephone operators (except switch board operators)
Operators of Mechanical Telegraph Machines
Supervisory agents as shown in Article 7
Agents and others shown in Article 30

effective and notwithstanding this fact the Telegraphers are claiming the right to physically write out this form.

The Carrier finally submits that the claim is without merit and is not supported by any rules and respectfully recommends to the Board that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Ottertail, Minnesota, is a one-man telegrapher station where the operator is not on duty on Sundays. On Sunday, December 7, 1947, the section foreman stationed at Ottertail was required to patrol his section and from a commercial telephone one-half block from the station called an operator-towerman at Detroit Lakes and received and copied a train line-up. Employees claim a violation of the Rest-day rule and assert that Claimant is entitled to a call thereunder.

The determination of this claim necessarily requires a review and consideration of the Scope Rule of the Agreement. If, under the circumstances, the work performed by the section foreman in this instance can be considered as the work of the Telegrapher at Ottertail, the claim must be sustained, otherwise denied.

There are a number of conflicting and irreconcilable awards of this Division on this question of section foremen obtaining train line-ups. Carrier seeks to sustain its position by asserting that the train line-up was obtained directly from a telegrapher and not from a train dispatcher, as was the case in many of the awards sustaining employees' claims. Yet there are awards where line-ups were received by foremen from telegraphers and claims were sustained. There are others in which under like circumstances, claims were denied. Other referees sitting with the Board have reviewed these conflicting decisions and attempted to analyze and distinguish. While it may be possible to distinguish some of the conflicting holdings of the Board on this question on minutely differing factual situations, any so-called reconciliation of the principal doctrines of those awards will not stand up under a logical appraisal. This situation certainly indicates that negotiation between the Organization and the Carrier affords a far better avenue for a general settlement of this vexing question than does interpretation of the Agreement by this Board. However, that was not the course pursued by the parties hereto and it is our duty to interpret the Agreement and apply it to the facts presented herein. We feel that review and analysis of the many awards referred to above would be futile. Accordingly, we shall consider this case purely on the facts presented herein and the applicability of the Scope Rule and the Rest-day Rule thereto.

This general observation is incontrovertible, to wit, that the Scope Rule of the Agreement between the parties hereto contains no delineation of work as such. It merely sets forth the classes of positions to which it is applicable. The work embraced by the Scope Rule is determined by that work which is required of the classes of positions listed therein. The position of agent-telegrapher is one of those listed in the Scope Rule and it is apparent that the work of the position as performed at the time of the Agreement was, therefore, embraced in the Scope Rule. During the week, when on duty, it was the duty of the incumbent of this position to secure train information for the section foreman stationed at Ottertail for his guidance while working on his section. Hence, said work was encompassed within the Scope Rule of the Agreement. If the foreman were working at a remote place, such a conclusion would not necessarily follow. Now, if this work were encompassed by the Scope Rule on weekdays, it is difficult to see how it could be excepted therefrom on Sundays. Hence, we feel that if the operator were readily available, he should have been called to perform the work required of his position on that day. That the operator was available is clear from the record. Accordingly, on all the facts presented and confining our decision solely thereto, we hold that the claim should be sustained.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

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

DISSENT TO AWARD NO. 4320, DOCKET TE-4341

This Award illustrates the method by which progressive deterioration of the meaning of the scope rule of telegraphers' agreements, as relating to the action of section men and other employees in procurement of train line-ups, could accrue through continued rendition of sustaining awards of unwarranted restrictive character as is this award.

In earlier cases before the Board the claims were that the procurement of line-ups from other than telegraphers constituted violations of the telegraphers' agreements. Most of such claims were upheld, but within the cases involved there was disclosed the sound contractual basis for that method of procuring line-ups and also disclosed that various carriers were discontinuing such procurement from other than telegraphers not because it was considered to have been a violation of their agreements but in an effort to conform to opinions expressed by the Board's awards and to ameliorate complaints to an extent consistent with proper operations.

However, advancing encroachments by the awards upholding certain claims apparently emboldened the submission of claims, such as the instant one, that the scope rule of the telegraphers' agreements not only provided that the procurement of line-ups must be exclusively from telegraphers, but that the scope rule also further requires that procurement be through a certain individual office or position as successive claims might allege.

Nothing in the scope of the telegraphers' agreement limits the procuring of line-ups to any particular telegraph office or to any particular day or days in any one or other telegraph office. Preponderating awards of this Division have held to the contrary.

The attempt here by an award to prescribe that an element of current performance at one or more offices,—an element unmentioned in the scope rule or other rules of the agreement, nevertheless, is representative of contractual understanding of the parties and of the meaning of the scope rule of their agreement, is so discordant with the ordinary rules of contract construction as to warrant condemnation of this award as an improper one.

It may be superfluous but should be added that the resulting inflexibility and impence in railroad operations which would accrue from improper

awards such as this of itself evidences that the interpretation of this agreement entered into mutually by the parties in this case is incorrect.

(s) C. C. Cook

The Scope rule of the Telegraphers' Agreement contains no delineation of work nor does it confer upon any particular telegrapher or office the sole and exclusive right to obtain train line-ups.

The effect of this award is to extend and expand, rather than interpret, the rule. This Board must construe and apply agreements as the parties make them, and it has no authority to change them even to avoid inequitable results from their application.

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