

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad that the agent-telegrapher at Canton, Kansas, shall be paid under the call and overtime rule of the Telegraphers' agreement on November 13, 1947 and each day thereafter Section Foremen and/or Extra Gang Foremen are required or permitted to copy lineups of train movements from the telegrapher on duty at McPherson, Kansas, by means of the commercial telephone, before the agent-telegrapher at Canton comes on duty.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties hereto bearing the effective date of August 1, 1947 as to rules governing working conditions, and of September 1, 1947, as to rates of pay is in evidence, copies of which are on file with your Board.

Prior to November 13, 1947, the agent-telegrapher at Canton, Kansas, with assigned hours 8:30 A. M. to 5:30 P. M. (one hour off for lunch) daily except Sundays and holidays, was called prior to his starting time to copy and deliver lineups for the section foreman permanently located at that station, and for Extra Gang foremen who might be stationed there temporarily.

On November 13, 1947, the agent-telegrapher at Canton received the following telegram from his supervisory officer, Chief Dispatcher Rowley at Liberal, Kansas:

"RA CY LIBERAL 923 A.M. NOV. 13, 1947
Section Foreman
Bolt Machine Opr
VCC
Canton

Effective today Canton will not be called for lineup. Section Foreman Bolt Machine Opr and Extra Gang Foreman call operator McPherson collect and get lineup on long distance telephone each morning before going to work. Joint all.

C T R 1045 a. m."

Beginning with November 13, 1947 and daily thereafter except for Sundays and holidays, the section foreman at Canton has copied line-ups daily prior to 8:30 A. M. when the agent-telegrapher came on duty, by means of the long distance commercial telephone from the telegrapher on duty at McPherson, Kansas, a continuously operated telegraph station adjacent

(a) Except as provided in paragraph (e) of this rule, no employe other than covered by this agreement will be required or permitted to handle train orders and clearance cards, or to report or block trains, or transmit or receive by telegraph, telephone or other communicating device, train orders, clearance cards, messages, line-ups, consists, pickups, setouts, reports of record, or other information at stations where an employe covered by this agreement is employed, except in emergencies defined below, in which event the telegrapher at such station will be notified and paid a call."

The agreement effective August 1, 1947 has no provision similar to the proposals of the organization quoted above with respect to the handling of lineups. Rule 24 of the August 1, 1947 agreement reads as follows:

"Rule 24. **Handling of Train Orders.** No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed, can be promptly located and is available, except in an emergency, in which case the telegrapher will be notified and paid for the call."

It will be obvious from the foregoing that the August 1, 1947 agreement conveys no right to the handling of lineups which the employes did not have in the January 1, 1928 agreement. As shown above, the employes sought in the negotiations which consummated in the agreement of August 1, 1947 to obtain a rule distinctly mentioning the handling of lineups and they were not successful. We maintain that the handling of lineups as they were handled in this instance by employes covered by the controlling agreement at McPherson, Kansas is not a violation of the controlling agreement. Therefore, the claim should not be sustained.

Assuredly, in view of the evidence which we have introduced above, the agreement was not intended to prevent a foreman from obtaining lineups by telephone. Such a situation was clearly not within the contemplation of the parties to the agreement and certainly in view of the history of the negotiations of the organization's attempt to obtain a rule specifically mentioning lineups, which it did not obtain, the handling of lineups in the manner in which they were handled in this instance is not a violation of the agreement. If, as the organization contends, only telegraphers may use the telephone for the purpose of transmitting or receiving lineups, then assuredly that must be spelled out in the specific language of the agreement, which, as we have shown, it is not.

We therefore respectfully petition the Board to deny this claim.

OPINION OF BOARD: As is readily apparent from the statement of claim, this docket involves the determination of whether or not Carrier has violated the Scope Rule of the Telegraphers' Agreement in requiring a Section Foreman to secure and copy train lineups. Employes assert that prior to November 13, 1947 the Agent-Telegrapher at Canton, Kansas was called prior to his regular starting time, in order to copy and deliver lineups for the Section Foreman located at that station and for Extra Gang Foremen who might be stationed there temporarily. On November 13, 1947, the Chief Dispatcher at Liberal, Kansas notified the Canton operator that he would not be called for lineup, that the Section Foreman, Bolt Machine Operator and Extra Gang Foreman should call McPherson, Kansas, a continuously operated telegraph station adjacent to Canton and approximately thirteen miles distant therefrom and get lineup before going to work. Carrier states that for some time prior to November 13, 1947 its maintenance forces were engaged in a program of rehabilitation in the vicinity of Canton and that during the beginning of the work and until it was nearly completed, the gang foremen obtained lineups from the Agent-Operator at Canton. Carrier further states that the Agent-Operator at Canton was not assigned to come on duty until 8:30 A. M. and because of the magnitude of the work being performed and to avoid the possibility of delays to trains, the Agent-Operator was brought on duty prior to his regular starting time for the purpose

of giving a lineup to the extensive maintenance force. Carrier further states that after November 13, 1947 when the major part of the work had been completed and it was not felt there was any further necessity for detailed lineups to the maintenance forces to avoid delays to trains, the usual practice was followed of having the Agent-Operator at Canton come on duty at his regular assigned hours and the remaining forces, including the Section Foreman of the section at Canton, secured their lineups from the telegrapher at a station where a telegrapher was on duty.

In previous recent awards we have pointed out the lack of harmony in the many awards written by this Board in connection with the question of violation of the Scope Rule of the Telegraphers' Agreement by requiring or permitting Section Foremen to secure train lineups by telephone. Suffice it to say in our opinion that, in the absence of negotiated agreements on this question, the merit of each claim has to be judged solely on the basis of the facts presented in the involved docket, and that general principles or holdings in prior awards are of little help in determining the disposition of such claims. We think this conclusion is well supported by the statement in Award 4265 where it was said:

"It seems to us that the better approach would be to balance and weigh many factors in resolving a controversy of this character. Among the matters that might be entitled to consideration are the following: Whether the function for which the telephone was used was formerly performed by means of the telegraph; the practices of the parties as these relate to whether the particular activities were regarded in the past as covered by the Agreement; whether the activity is closely related to the recognized duties of those in the telegraphers class; and whether or not the activity had any relationship to the movement of trains or other operational functions. The above are merely indicative of the elements which, in our judgment, should be considered, and they are not to be regarded as comprehensive or exclusive."

In the instant case we find that some time prior to November 13, 1947 Carrier called the Operator at Canton to perform this work. For how long a period of time it is difficult to say for the Employees have merely stated that it was prior to November 13, 1947. Carrier, as pointed out above, says that it was during the beginning of the rehabilitation work but does not indicate when the work started. Apparently, to allay any inference that in calling the Operator, it recognized this work as coming under the Scope Rule of the Agreement, Carrier attributes the cause of his being called to the magnitude of the rehabilitation program and then states that "After November 13, 1947, when the major part of the work had been completed and it was not felt there was any further necessity for detailed lineups to the maintenance forces to avoid delays to trains, the usual practice was followed of having the Agent-Operator at Canton come on duty at his regular assigned hours and the remaining maintenance forces, including the section foreman of the section at Canton, secured their lineups from the telegrapher at a station where a telegrapher was on duty." (Emphasis supplied.) Carrier, however, to some extent refutes its own statement with respect to a so-called return to the usual practice in that later on in its rebuttal argument it states that lineups, such as are referred to and quoted by Petitioner in its original submission, have not been given in the manner complained of since November 30, 1947.

Now then, apply the facts above mentioned to the above quotation from Award 4265. We think: (1) In this instance, keeping in mind that the Foreman was stationed at the telegraph station, the telephone was used for a function which was formerly telegraphic; (2) There is not sufficient in the record to indicate a long existing practice of recognition of the work as being exclusively that of the telegrapher but there is some evidence to show that for some time the work was assigned to him; (3) That the use of the train lineups in this instance bore some relationship to the movement of trains, as witnessed by Carrier's statement that one of the purposes of calling the telegrapher was to avoid delay to its trains. Under the facts as existing in

this docket and solely thereon, we hold that a sustaining award is in order. Monetary reparation, in view of the statement of both parties, will not be ordered for any period after November 30, 1947.

We deem it necessary to comment upon Carrier's contention to the effect that the Organization's proposal of a rule involving lineups and failure to have it written into the contract of August 1, 1947 precludes it from asserting jurisdiction of the work. We cannot agree with this contention. In view of the conflicting nature of awards of this Board and the uncertainty regarding the receiving and copying of train lineups by employees other than telegraphers, it seems clear that that was an attempt to write a rule designed to eliminate the controversy. When that attempt was abandoned, such abandonment in our opinion in no way constituted a limitation on the Scope Rule.

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 employee involved in this dispute are respectively carrier and employee 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 Carrier violated the Agreement.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of August, 1949.