

Award No. 4516

Docket No. TE-4353

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware, Lackawanna & Western Railroad Company—

1. The agent-operator at Oxford, New York, shall be paid a call under Rule 5 of the May 1, 1940 Telegraphers' Agreement or Article 5 (a) of the November 1, 1947 Telegraphers' Agreement (identical rules) on each day since January 3, 1947, of which he was improperly deprived, because a signal maintainer, an employe not under the Telegraphers' Agreement, was permitted or required by the Carrier, in violation of the terms of said Agreement, to copy a line-up of train movements on each day working at Oxford, New York, from the operator at Norwich, New York, by means of the telephone before the agent-operator at Oxford reports for work;

2. The agent-operator at Sherburne, New York, shall be paid a call under Rule 5 of the May 1, 1940 Telegraphers' Agreement or Article 5 (a) of the November 1, 1947 Telegraphers' Agreement (identical rules), on each date since September 9, 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 said Agreements, to copy a line-up of train movements on each day working at Sherburne, New York, from the operator at Norwich, New York, by means of the telephone before the agent-operator at Sherburne reports for work;

3. The agent-operator at Baldwinsville, New York, shall be paid a call under Article 5 (a) of the Telegraphers' Agreement on each day since November 28, 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 said Agreement, to copy a line-up of train movements on each day working at Baldwinsville, New York, from the towerman at Magnolia Street Tower, Syracuse, New York, by means of the telephone before the agent-operator at Baldwinsville reports for work; and

4. The senior extra board employe not working, shall be paid a day's pay (\$10.08) since September 18, 1947, when train line-ups have been copied at Sauquoit, New York, of which he was improperly deprived, because a welding department foreman, an employe not under the Telegraphers' Agreement, was permitted or required by the Carrier, in violation of the Telegraphers' Agreement, to copy a line-up of train movements on each day

working at Sauquoit, New York, from the operator at Utica Yard by means of the telephone.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties, referred to herein as the Telegraphers' Agreement, bearing effective date of May 1, 1940, is in evidence. A revised Telegraphers' Agreement bearing effective date of November 1, 1947, superseding the May 1, 1940 Agreement, is also in evidence. Copies are on file with the National Railroad Adjustment Board.

OXFORD

The 1940 Telegraphers' Agreement lists at Oxford an agent-operator position, rate of pay 70¢ an hour. The same position is listed in the 1947 Telegraphers' Agreement, rate of pay \$1.23 an hour.

January 3, 1947 to October 12, 1947 the assigned hours of the agent-operator at Oxford were 10:00 A. M. to 7:00 P. M. (lunch period 3:15 P. M. to 4:15 P. M.). Beginning October 14, 1947, and continuing forward, the hours are 9:00 A. M. to 6:00 P. M. (lunch period 2:00 P. M. to 3:00 P. M.).

As indicated by Employees' Attachment "A"-(1), the Carrier required or permitted a signal maintainer at Oxford, an employe not under the Telegraphers' Agreement, each working day beginning January 3, 1947, to copy by long distance telephone a line-up of train movements, which was issued by the train dispatcher and which was relayed to said signal maintainer through the operator at Norwich, prior to the time the agent-operator at Oxford went on duty.

The Organization claimed "call" payments in favor of the Oxford agent-operator account work denied. The claim was denied.

SHERBURNE

The 1940 Telegraphers' Agreement lists at Sherburne three (3) positions, viz., agent-operator, \$156.00 per month; first operator, 70¢ an hour; and second operator, 70¢ an hour. The 1947 Telegraphers' Agreement lists only the agent-operator position, \$264.12 per month.

Prior to September 9, 1947 the Sherburne office was open 7:00 A. M. to 6:45 P. M.—the agent-operator worked 7:00 A. M. to 3:00 P. M. and a clerk-operator worked 10:45 A. M. to 6:45 P. M. Effective September 9, 1947, the clerk-operator position was abolished and the agent-operator's hours changed to 9:45 A. M. to 6:45 P. M. (Lunch period 2:15 P. M. to 3:15 P. M.) With the inauguration of Daylight Time these latter hours were changed to 10:30 A. M. to 7:30 P. M. (Lunch period 3:00 P. M. to 4:00 P. M.)

Each working day prior to September 9, 1947 the agent-operator copied a line-up of train movements from the train dispatcher for delivery to the section foreman. Effective September 9, 1947, and continuing forward each working day, as indicated by Employees' Attachment "A"-(2), the Carrier required or permitted the section foreman at Sherburne, an employe not under the Telegraphers' Agreement, to copy by long distance telephone a line-up of train movements, which was issued by the train dispatcher and which was relayed through the operator at Norwich, prior to the time the agent-operator at Sherburne went on duty.

The Organization claimed "call" payments in favor of the Sherburne agent-operator account work denied. The claim was denied.

BALDWINSVILLE

The 1940 Telegraphers' Agreement lists at Baldwinsville an agent-operator position, rate of pay \$151.20 per month. The same position is listed in the 1947 Telegraphers' Agreement, rate of pay \$268.12 per month.

The assigned hours of said agent-operator are 8:45 A. M. to 5:45 P. M. (Lunch period 12 Noon to 1:00 P. M.).

The argument in support of the Carrier's position is set forth under Part 1 of the claim and, in the interest of brevity, will not be repeated here. Award 3363, above set forth, requires denial of the claim.

CARRIER'S STATEMENT OF FACTS (PART 4): Sauquoit and Utica are located on Carrier's Utica Branch. Utica Branch extends between Utica and Chenango Forks, a single track, lightly used line. Four local passenger trains, two symbol freight trains operate between Binghamton and Utica daily. Binghamton is an intermediate terminal on the Carrier's main line. One local freight operates between Utica and Richfield Springs, daily except Sunday.

A sketch of the Utica Branch follows:



Sauquoit is a point where no operator or Agent is employed.

Welder Walter Cleave on September 18, 1947, started work at 6:00 A. M. at Sauquoit. The nearest open telegraph office at the time Mr. Cleave went on duty was Utica Yard office where he called for a line-up and received same at 6:07 A. M.

There is no agreement rule between the Carrier and Telegraphers which provides for payment of a "call" when employes such as a welder receives a track car line-up, particularly when such line-up is received through an operator. Obviously this Carrier could not assign a telegrapher on every track car.

No extra employe was available on the date in question.

POSITION OF CARRIER: There was no violation of the agreement. This Board has so held in cases of this kind in denying similar claims.

The argument in support of the Carrier's position is set forth under Part 1 of the claim. In the interest of brevity it will not be repeated here. Award 3363 requires denial of the claim.

CONCLUSION

Matters herein above referred to have been handled by correspondence with the Employes' Committee, but no evidence of any alleged specific violation has been presented to the Carrier on the property and the Carrier denies any violation.

The claims have not been handled by the Organization in accordance with the requirements of the Railway Labor Act.

The Carrier demands affirmative proof that the claims are authorized by the putative claimants.

Award 3363 established the rule on this property and the Carrier was entitled to rely upon that Award.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves the copying of line-ups of train movements by long distance telephone by employes not under the Telegraphers' Agreement. Violations are alleged to have occurred at Oxford, Sherburne, Baldwinsville and Sauquoit. Each of the four numbered paragraphs of the claim deals with the claimed violation at one of these points. They constitute, in fact, four separate and distinct claims and we shall so treat them in the preparation of this award.

At Oxford, it is asserted by the Organization that on each working day beginning January 3, 1947, the Carrier required or permitted a signal maintainer, an employe not under the Telegraphers' Agreement, to copy a line-up

of train movements by long distance telephone prior to the time the Agent-Operator went on duty. The line-up was issued by the train dispatcher and obtained by the signal maintainer from the telegraph operator at Norwich. The Organization claims a call in favor of the Agent-Telegrapher for having been denied the work.

At Sherburne, it is alleged by the Organization that on each working day beginning September 9, 1947, the Carrier required or permitted the section foreman, an employe not under the Telegraphers' Agreement, to copy a line-up of train movements by long distance telephone prior to the time the Agent-Operator went on duty. The line-up was issued by the train dispatcher and obtained by the section foreman from the telegraph operator at Norwich. The Organization claims a call for the Agent-Operator because the work was denied him.

At Baldwinsville, it is alleged that on each day commencing September 18, 1947, the Carrier required or permitted a section foreman, an employe not under the Telegraphers' Agreement, to copy a line-up of train movements by long distance telephone prior to the time the Agent-Operator went on duty. The line-up was issued by the train dispatcher and obtained by the section foreman from the telegraph operator at Syracuse. The Agent-Operator at Baldwinsville claims a call because the work was denied to him.

At Sauquoit, it is alleged that on each day subsequent to September 18, 1947, the Carrier required or permitted the foreman of a welding gang, an employe not under the Telegraphers' Agreement, to copy a line-up of train movements by long distance telephone. The line-up was issued by the train dispatcher and obtained by the foreman of the welding gang from the telegraph operator at the Utica Yard Office. There is no telegrapher's position at Sauquoit. The Organization claims a day's pay for the senior idle extra employe entitled to perform the work.

It will be noted that the claimed violations at Oxford, Sherburne and Baldwinsville are identical in principle. The determination of the dispute at Oxford will therefore determine those at Sherburne and Baldwinsville. The claim arising at Sauquoit is different in that there is no employe under the Telegraphers' Agreement stationed at that point who could have performed the work on a call basis. The claim is for a day's pay to the senior extra employe available to perform the work.

The awards dealing with this subject are in irreconcilable conflict. It is urged by the Carrier that the matter having been once determined by an award (Award 3363) arising on its property, the Board is not warranted in overruling the previous award construing the identical provisions of the contract. The Organization insists just as vehemently that Award 3363 is palpably wrong and not only should be, but has been overruled. See Award 3881, an award arising on the property of this Carrier and decided adversely to Award 3363 and its supporting awards. We quite agree that awards interpreting agreements ought not to be overturned except for very sound reasons. Changes in the interpretations of identical provisions of agreements tend to confuse rather than facilitate their application. We must point out, however, that an award cited as a precedent is no better than the reasoning contained within it, especially where awards in conflict with it exist. It will be our purpose, therefore, to resolve the questions here presented on the basis of controlling rules considered in the light of their historical background and the effect given them by the well reasoned decisions of this Board.

The Scope Rule of the Telegraphers' Agreement does not purport to specify or describe the work encompassed within it. It sets forth the class of positions to which it is applicable. The traditional and customary work of those positions, generally speaking, constitutes the work falling within the Agreement. It cannot be disputed that the classes specified deal largely with communication service. Historically, communication service on the railroads was carried on largely by telegraph. In former days, a telegraph operator was required at every point where communication service was essential to

the safe and efficient operation of the railroad. Basically, the telegraphers were then composed of the large group of Morse code operators required to operate the telegraphic system which afforded the Carrier its chief means of communication. The advent of the telephone, mechanical telegraph machines, central traffic control systems, and other progressive methods of communication, has gradually reduced the work of the Morse code operator. This Board has sought to follow the communication work of the Morse code operator into the advanced methods of communication and preserve for him the work which traditionally belonged to him.

In the case before us, we are concerned only with the use of the telephone. As a common means of communication, the telephone has largely superseded the telegraph. It is easy to operate and its use is common to almost every person. No technical training is necessary in its operation with the result that if positions and not work were all that is contained in the Scope Rule of the Telegraphers' Agreement, the traditional telegrapher would soon become the victim of progress in the development of new means of communication. This situation undoubtedly accounts for the inclusion of "telephone operators (except switchboard operators)" in the Scope Rule. But it was readily apparent that the use of the telephone was so general that every use of the telephone was not contemplated or intended as telegraphers' work. It was thereupon determined that employes whose duties require the transmitting or receiving of messages, orders or reports of record by telephone in lieu of telegraph constitutes the telephone work reserved exclusively to telegraphers. Award 1983.

A line-up of train movements is information extended to those who perform track maintenance service or operate motor cars on the Carrier's tracks giving the location of trains at a stated time. This affords protection to the recipient in the use of tracks over which trains are operating. They are not train orders and grant no authority to use or obstruct tracks over which trains are running. Train crews on trains listed in the line-ups are not given copies and have no knowledge of their issuance. They are simply safety precautions issued to those who are required to use or obstruct tracks subject to train movements. We think they are transportation communications in the sense that they protect a necessary branch of the service from the dangers of another. They are clearly matters of record. No carrier having the efficiency of railroad operation and the safety of its maintenance employes in mind would fail to make train line-ups a matter of record. The voluminous number of line-ups attached to the Organization's submission is conclusive evidence that this Carrier so considers them. We agree with the holdings of this Board, therefore, that the sending and receiving of train line-ups is work reserved to telegraphers under the Scope Rule of their Agreement. It is exclusively reserved to them except for the recognized right of dispatchers to issue them in the first instance. This Division has held that it is a violation of the Telegraphers' Agreement for an employe not within its scope to secure a train line-up from the dispatcher by telephone. Awards 3116, 2934. We are in complete agreement with these holdings. The reason underlying their correctness is that in earlier times there was no method of communication with the dispatcher from outlying points other than by telegraph. Consequently, it was work which traditionally belonged to telegraphers and the use of the telephone was in lieu of the telegraph.

Where a telegrapher's position is required and has been assigned to a station, a section foreman or others requiring a train line-up who is working in proximity thereto, can properly obtain it from the operator. That he can obtain it by calling in person or by the use of the telephone is hardly subject to question. This for the reason that the use of the telephone under such circumstances is a substitute for a personal trip on his part and in no sense of the word is it in lieu of work traditionally performed by a telegrapher. But if the telegrapher is not on duty, such fact does not authorize one not under the Agreement to perform the work traditionally belonging to the telegrapher. It does not authorize him to call the dispatcher or some other station for the reason that he could not have done so formerly except by using the telegraph. In other words, when an employe not under the Tele-

raphers' Agreement uses the telephone under such circumstances, he is impinging upon work which traditionally belonged to telegraphers. This being a part of the telephone work preserved for telegraphers by placing "telephone operators" within the Scope Rule of their Agreement, it now belongs to telegraphers. We adhere to those awards which hold that the use of the telephone by persons not under the Telegraphers' Agreement at a station when an assigned operator is off-duty and available for a call, is a violation of the Agreement and entitles the operator to payment for a call. Awards 4320, 3116. Applying this holding to the present case, the claims of the Organization at Oxford, Sherburne and Baldwinsville are valid and are sustained.

At Sauquoit, an altogether different claim is made. There was no telegrapher position at this point and so far as the record shows, there never had been. The welding foreman, an employe outside the Telegraphers' Agreement, called the operator at Utica Yard by telephone to secure a train line-up. It is contended that the use made of the telephone by the welding foreman constitutes a violation of the Agreement. In considering this case, it must be borne in mind that all telephone work is not reserved exclusively to the telegraphers. As we have hereinbefore stated, the placing of "telephone operators" in the Scope Rule of the Telegraphers' Agreement had the effect of reserving to telegraphers the transmitting or receiving of messages, orders or reports of record by telephone in lieu of telegraph. But the work of transmitting or receiving such communications is limited by the work traditionally performed by telegraphers in connection therewith, it being a reservation of work rule. Clearly, a reservation of work rule cannot create new work or extend itself beyond that from which it has its origin. In former times, under the situation here shown, the welding foreman could not have obtained his train line-up at Sauquoit because there was no operator's position established there. He could not have contacted the dispatcher because an operator was necessary to do that. Consequently, it would have been necessary for him to go to Utica Yard to obtain the line-up or have it sent to him by some authorized means. In other words, the obtaining of a train line-up at Utica Yard would not have been handled by a telegrapher. This being true, the use of the telephone at Sauquoit was not in lieu of any work performed by a telegrapher and consequently is not reserved to the telegraphers by the Scope Rule. If this were not so, the Carrier would be required to maintain telegrapher positions at every point on its railroad where maintenance work is performed and train line-ups required. Of course, maintenance work is required over the full length of the railroad. But a reservation of work cannot have the effect of creating new positions which extend the Scope Rule beyond its former range. It was never contemplated by the rule and the interpretation given it, that positions would have to be created to any such extent to avoid the payment of penalty claims such as we have here. The reservation of work by telephone includes only that which telegraphers formerly performed by telegraph, and nothing more. Telegraphers formerly performed no work in connection with the obtaining of train line-ups by a maintenance employe from the nearest adjacent station when no operator was assigned at the point where he was working. Consequently, no such work is reserved to telegraphers and the Carrier was not violating the Telegraphers' Agreement in permitting the welding foreman at Sauquoit to call the operator at Utica Yard by telephone to secure the train line-up. The use of the telephone under such circumstances is in lieu of a personal trip or of messenger service. It is not in lieu of any work formerly performed by a telegrapher. The claim of the senior extra employe not working, for a day's pay for not being used at Sauquoit to procure the train line-up for the welding foreman, is not valid and is denied.

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 Employes involved in this dispute are respectively carrier and employes 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 to the extent shown by the opinion.

AWARD

Claims (1), (2) and (3) sustained. Claim (4) denied.

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.

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Interpretation No. 1 to Award No. 4516

Docket TE-4353

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: The Delaware, Lackawanna & Western Railroad Company.

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Paragraph 1 of the claim as originally filed with this Division in part states that "The agent-operator at Oxford, New York, shall be paid a call * * * on each day since January 3, 1947, * * * because a signal maintainer, an employee not under the Telegraphers' Agreement, was permitted or required by the Carrier, * * * to copy a line-up of train movements on each day working at Oxford, New York, from the operator at Norwich, New York, by means of the telephone before the agent-operator at Oxford reports for work". Our award sustained the claim.

It is the contention of the Carrier that all the claims covered by Docket TE-4353 were filed with this Board on July 13, 1948 and that Award 4516 adjudicated only the claim for a call on January 3, 1947. It is claimed that subsequent claims for similar violations were not handled on the property as required by the Railway Labor Act and that claims on days subsequent to the date of giving notice of appeal to this Board, to-wit July 13, 1948, were not even in existence at that time.

We point out that the dispute involved the question whether a signal maintainer could copy train line-ups under the circumstances shown in the claim. This Board decided by Award 4516 that a signal maintainer could not perform such work and that the agent-telegrapher was entitled to be paid a call for having been deprived of the work. This issue was handled on the property and is decisive of all similar violations that occurred at this point. The award adjudicates all such violations until the Carrier corrects the violation of rules of which complaint was made. Under such circumstances, a claimant is not required to file claims for each day that the violation occurred. As before stated, the award has the effect of sustaining all such claims until the violation complained of is corrected. The record shows that the Carrier correctly applied the rules on and after September 13, 1949. Award 4516 requires that the agent-telegrapher be paid a call on each day from January 3, 1947 to September 13, 1949, that a signal maintainer was permitted or required to copy line-ups of train movements in violation of the agreement. The contention of the Carrier, if sustained, would result in a multiplicity of claims and an unjustified splitting of claims which are based upon a single misinterpretation of the rules.

The Carrier contends that reparations for past violations are not in order because of the conflicting awards dealing with the subject. No claim is here

made for reparations prior to January 3, 1947. The record does not indicate undue delay in processing the claim. This contention is also without merit.

Paragraphs 2 and 3 of the claim are in identical position with paragraph 1 thereof. The same interpretation will be applied to them.

Referee Edward F. Carter, who sat with the Division as a member when Award No. 4516 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of May, 1950.