

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Denver and Rio Grande Western Railroad Company; that,

(1) When the Carrier issued instructions to its section foremen and other operators of motor cars on November 21, 1947 to discontinue the securing of lineups directly from train dispatchers and in lieu thereof to secure such lineups from telegraphers at certain designated telegraph offices, it violated the terms of the current Telegraphers' Agreement by subsequently requiring and/or permitting section foremen and other operators of motor cars at Swallows, Portland, Florence, Parkdale, Texas Creek, Cotopaxi and Howard to secure their lineups from the telegraphers at Canon City and/or Pueblo yard prior to the time the telegraphers at those locations came or come on duty in the mornings, and to daily, except Sundays and holidays, secure lineups at Dry Creek and Pleasanton where telegraphers are not employed; and

(2) That the carrier shall be required to compensate the telegraphers at Swallows, Portland, Florence, Parkdale, Texas Creek, Cotopaxi and Howard on the basis of a call on each occasion section foremen and other operators of motor cars have copied or may copy lineups prior to the time the claimants came or come on duty at their respective stations subsequent to November 21, 1947, and thereafter as long as the carrier continues to violate the terms of the agreement; and

(3) That the carrier shall be required to compensate the senior idle employe on the basis of a day's pay on each occasion section foremen and other operators of motor cars have copied or may copy lineups at Dry Creek and Pleasanton subsequent to November 21, 1947 and thereafter as long as the carrier continues to violate the terms of the agreement.

EMPLOYES' STATEMENT OF FACTS: There is in effect an agreement between the parties to this dispute bearing effective date of June 1, 1946, a copy of which is on file with this Board.

Under date of November 21, 1947, Chief Dispatcher, M. W. Egley, Salida, Colorado, issued the following instructions addressed to dispatchers at the following offices: E. B. Herdmar, H. O. Chappell, C. R. Holmberg, and Operators at Pueblo and Canon City.

'Account complaint from Telegraphers' Organization we cannot permit track foremen and others operating motor cars to secure their

of the Telegraphers' Agreement on this property, as set forth in Award 1320, must of necessity be entitled to more weight than are Awards made in other cases on other properties, when such Awards do not involve the same identical agreement and the same interpretations.

In addition, the Carrier contends the pattern with respect to telegraphers—any telegrapher—furnishing section foremen with lineups has been established on this property, not only by usage over a period of many years, but also by Award 1320 of your Board.

The Carrier holds there is no justification for this claim. We admit we cannot require a section foreman or others to secure a lineup from the trick dispatcher, without violation of the Telegraphers' Agreement. We do contend, and our contention is supported and sustained by Award 1320, that we are not violating any rule or settlement with the Telegraphers' Organization when section foremen or others who operate motor cars or other on-track machines receive lineups from telegraphers.

The identical question in this dispute was disposed of in Award 1320, and the instant case should be likewise denied.

All data in support of the Carrier's position has been submitted to the Organization and made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: This is another of the numerous claims arising out of the securing of line-ups by section foremen and other motor car operators by telephone in the absence of a telegrapher on duty at the station from which the call is made.

Here the claims are based in part on obtaining line-ups from telegraphers at other stations when the telegrapher at the station where the call was made was off duty, and in part on line-ups so obtained from stations where no telegrapher was employed.

There is no possibility of reconciling the awards of the Board on this issue. The Carrier contends that Award 1320 should control here, both by its merit and the fact that it was decided on the same property. Such an award should not be lightly overruled. Yet, on this very issue, similar Award 3363, with Opinion by Referee Messmore, has recently been three times overruled by awards on the property of the same Carrier: by Award 3671, with Opinion by Referee Miller; by Award 3881, with Opinion by Referee Yeager; and by Award 4516, with Opinion by Referee Carter. To like effect are Awards 4506 and 4320.

We are in accord with the holding in Award 4516 that such line-ups are transportation communications and "messages, orders or reports of record", reserved to those under the Telegraphers' Agreement to the extent historically performed by them; that the obtaining of a line-up, as here shown, by an employe not under the Agreement, at a station where there is an assigned operator off duty and available for a call, is a violation of the Agreement, and that the obtaining of a line-up by such employe at a place where no operator is assigned, is an extension of the use of the telephone beyond the range of former telegraphic service, and is not a violation of the Agreement.

As appears from the submissions, the factual situation and the rule resulting in Award 4516 are the same as those premising the present claim; that award was carefully considered, and further inconsistency in decision can only plague the industry with confusion worse confounded. We think that award should be followed.

However, in view of the fact that prior Award 1320 was made on its property, the Carrier should not be penalized for operating consistently with that award. Accordingly, we think no compensation should be required for what we now hold to have been violations of the Agreement, occurring prior to the effective date of this award.

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 Agreement was violated except in securing line-ups at Dry Creek and Pleasanton, and that compensation should be denied for violations occurring before the effective date of this Award.

AWARD

Claims (1) and (2) be sustained to the extent indicated in the Opinion. Claim (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of March, 1950.

DISSENT TO AWARD 4772—DOCKET TE-4484

The Referee, after having stated that a prior denial award on this issue on this same property should not be lightly overruled, then proceeds by an award to lightly overrule this prior award. This result is attained only by entirely ignoring the different factual situation shown in this docket and by disregarding the preponderating awards of the Division on this subject.

This award again brings into sharp focus the method by which progressive deterioration of the meaning of the Scope Rule of the Telegraphers' Agreement, as relating to train line-ups, accrues through an unwarranted sustaining award of this character.

The Scope Rule of the Telegraphers' Agreement contains no delineation of work. The Division said in Award 1320:

"If, as contended by Employees; no one except a telegrapher should be permitted to use the telephone to obtain train lineups from other telegraphers at stations where a telegrapher is employed, we are of the opinion that such a requirement is not to be found in the Scope Rule of the agreement but may be found only in a specific agreement of the parties of the same type as that deemed necessary in this agreement relating to train orders, and found in Rule 2 of the agreement."

The effect of this award is to extend and expand, rather than to interpret the rule. This Division must construe and apply agreements as the parties make them and it has no authority to change them.

/s/ J. E. Kemp
/s/ C. P. Dugan
/s/ C. C. Cook
/s/ R. H. Allison
/s/ A. H. Jones