

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Francis J. Robertson, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS  
NORFOLK AND WESTERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk and Western Railway Company,

(1) That B. Thornhill, regularly assigned agent and operator at Rarden, Ohio, hours 8:30 A.M. to 5:30 P.M., exclusively of the meal hour, shall be paid for a call on December 19, 1947, under Article 7 (b) of the Telegraphers' Agreement account of Section Foreman, an employee not under the Telegraphers' Agreement, copying a line-up of trains at Rarden direct from the Train Dispatcher by telephone at 7:33 A.M. on December 19, 1947, when agent-operator Thornhill was not on duty;

(2) That F. M. Stump, regularly assigned agent-operator at Lawshe, Ohio, hours 8:30 A.M. to 5:30 P.M., exclusively of the meal hour, shall be paid for a call on December 19, 1947, under Article 7 (b) of the Telegraphers' Agreement, account of Section Foreman, an employee not under the Telegraphers' Agreement, copying a line-up of trains at Lawshe direct from the Train Dispatcher by telephone at 7:33 A.M. on December 19, 1947, when agent-operator Stump was not on duty; and

(3) That each of the claimants or the incumbents of the agency positions at Rarden and Lawshe shall be additionally compensated on the basis of a call for each date subsequent to December 19, 1947, on which Section Foreman at Rarden and Lawshe have or may copy train line-ups at those stations at a time when the agent-operator at the respective station has not or may not be on duty.

**JOINT STATEMENT OF FACTS:** An agreement bearing date of December 1, 1939, as to working conditions, and September 1, 1947, as to rates of pay, is in effect between the parties to this dispute.

Claimant B. Thornhill was the regular assigned agent and operator at Rarden, Ohio, on December 19, 1947, with assigned hours 8:30 A.M., to 5:30 P.M., exclusive of the meal hour daily except Sunday. At about 7:33 A.M. on December 19, 1947, Carrier's train dispatcher gave to the section foreman at Rarden, by telephone, a line-up of trains prior to the time the agent-operator at Rarden came on duty.

Claimant F. M. Stump was the regularly assigned agent-operator Lawshe, Ohio, on December 19, 1947, with assigned hours 8:30 A.M. to 5:30 P.M., exclusive of the meal hour daily except Sunday. At about 7:33 A.M. on December 19, 1947, Carrier's train dispatcher gave to the section foreman at Lawshe, by telephone, a line-up of trains prior to the time the agent-operator at Lawshe came on duty.

Claim for pay for a call under Article 7, paragraph (b), of the Telegraphers' Agreement was made in behalf of each of the claimants on the

Mr. Snedegar: "I would like to ask if it is the intention under the language of the proposed rule to change any of our existing practices on this railroad."

Mr. Lunsford: "I don't think so. It certainly was not our intention, but we were simply looking to the future. With reference to printers—it was necessary on one railroad to take the question to the Board, and we thought we should include them if that would come around."

Mr. Lewis: "Do you have any practice that would conflict with that rule?"

Mr. Snedegar: "I had in mind a number of cases that have come up on other railroads. I have in mind the practice on this property,—the handling of messages on line by foremen or others."

Mr. Lunsford: "I think that has been our practice."

Mr. Snedegar: "In other words it is not the intention by changing the scope to change the practices on this railroad?"

Mr. Lewis: "I think what the boys have in mind is to include all employes that perform telegraph service or handling of these messages. It might be that you have some places you have someone handling telephones that might conflict with what we have here."

Mr. Snedegar: "That is exactly what I have in mind. By putting in that language it is all too inclusive. It looks like with that language if we did not have a definite understanding it would include any kind. Certainly, I don't think you intend that."

Mr. Lewis: "I doubt whether all of the proposed rule is necessary as I think you have it in your present rule. It looks like the Committee was trying to amplify the present rule."

It will be noted from the above discussion of the Organization's proposal in 1939, the Employes declared it was not their intention to change any existing practices even if the rule they proposed was adopted. However, the rule they proposed was not adopted, and the rule as written in the 1920, 1922, 1924 and 1926 agreements was carried forward in the 1939 agreement unchanged. The foregoing discussion clearly reflects the intentions of the parties to the agreement. Furthermore, the conduct of the parties under the agreements for twenty-seven years is sufficient evidence of the intent of the parties as to the meaning of the rule.

It is the position of the Carrier that Article 1 of the Agreement was not violated when the section foremen at Rarden and Lawshe, Ohio, obtained information concerning the location of trains from the train dispatcher by use of the telephone. There being no rule violation, there is no basis for claim.

(Exhibits not reproduced).

**OPINION OF BOARD:** Section foremen at Lawshe and Rarden, Ohio, prior to commencement of work on December 19, 1947, obtained train lineups by telephone from the train dispatcher at Portsmouth, Ohio. There are regularly assigned agent-operators at both Lawshe and Rarden, 3:30 A.M. to 5:30 P.M. daily except Sunday.

It is the Employes' contention that the obtaining of such lineups by the section foremen was in violation of the Scope Rule of the current Agreement.

It is the Carrier's contention that such work is not covered by the Scope of the Agreement on this property, train lineups having been obtained by foremen from dispatchers, telegraph operators, levermen, etc., on this Carrier ever since motor cars came into general use thirty-five years ago.

The Scope Rule of the involved Agreement reads as follows:

"Employees required to perform telegraph service of any character or duration, Telephone Operators (except Switchboard Operators), Agents listed herein, Agent Telegraphers, Agent Telephoners, Towermen, Levermen and other employees included in this schedule of rates will be considered Telegraphers within the meaning of this agreement, irrespective of title by which designated or character of service performed.

NOTE—The term 'Towermen' is synonymous with 'Levermen' and both are required to operate interlocked switches and/or signals by means of levers from a central point."

It appears from the record that the Scope Rule as now contained in the Agreement between the Carrier and the Telegraphers was first adopted and appeared in the Agreement effective April 1, 1920 and was carried forward without change into Agreements effective December 16, 1922, April 1, 1924, February 1, 1926 and the current Agreement effective December 1, 1939.

Awards of this Board with respect to the question of section foremen receiving and copying train lineups by telephone are legion. They are also lacking in harmony and consistency. Fundamentally, however, the determination of the question must be made on the basis of what work is or is not encompassed within the Scope of the Telegraphers' Agreement effective on the property on which the claim arises.

The Scope Rule of the current Agreement, as is clear from the quotation thereof appearing in the earlier part of this Opinion, does not purport to describe the work encompassed within it. It sets forth the classes of positions covered and by reference includes classes of employees listed in the wage schedule. Peculiarly, one of the classes listed in the wage schedule is that of dispatchers.

In order to determine the work encompassed within the Scope of a rule such as that involved herein, we look to the traditional customary work of the classes of positions listed within the Scope at the time of the writing of the Agreement. This is so, because it is presumed that in the writing of the Agreement the parties must have intended that certain work is reserved to the classes of employees listed therein. Otherwise, there would be nothing for the Agreement to operate upon. Primarily, the problem is one of determining the intent of the parties.

The record in this case shows that section foremen prior to the writing of the instant Agreement and as far back as 1920 when the first Agreement on the property was written, obtained lineups from dispatchers by telephone and have continued to do so until the present time. Since then, as indicated above, four different Agreements have been entered into between the parties, all of which carried an identically worded Scope Rule. The record reveals that during the negotiations leading up to the present Agreement, the Employees sought to change the Scope Rule but that was objected to by the Carrier for the reason that the proposed rule was too broad. At that time it was admitted by the General Chairman that the practice of handling of messages on line by foremen and others was followed on this property. In March of 1938 one of the earliest Awards of this Board sustaining a claim for violation of the Telegraphers' Agreement because a section foreman obtained a train lineup by telephone, was adopted. No similar claim has ever been made on this property until the instant case. While we believe that as a general rule traditionally the work of transmitting or receiving of messages, orders or reports of record by telephone constitutes the telephone work generally reserved to telegraphers under their Agreement, in the instant case, at the time of writing of the effective Agreement on this property, the parties by their conduct and admissions had on this property established an exception to the general rule insofar as obtaining train lineups by section foremen is concerned. Why the Organization did not seek to change this policy is not clear. It could have been because under this present Scope Rule dispatchers were included in the Telegraphers' Agreement or because of the fact (as the record shows) that train lineups on this property were very informally handled, no file being kept of them at the place of receipt and it being questionable

as to whether there was or is a clearly defined requirement with respect to keeping a permanent record thereof at the place of transmission.

We are fully cognizant of, and are in agreement with, the many Awards of this Board holding that repeated violations of an Agreement do not change it, or stated differently, that a long existing practice does not change the clear terms of an Agreement. However, it is also a well-established rule of contract construction that the re-adoption of a rule generally has the effect of re-adopting the mutual interpretation placed upon it by the parties themselves. In fact, it evidences an intent not to change the existing interpretations. Both parties at the time of the adoption of the Scope Rule into the current Agreement were fully cognizant of the fact that under the previous Agreements the work of obtaining train lineups by telephone was not being treated as exclusively reserved to the classes of employees listed therein. Consequently, it must be held that the re-adoption of the rule, in the instant Agreement as well as in other earlier Agreements, was not intended to change the meaning previously given to it. It follows that under this Agreement on the property it is not a violation of the scope Rule of the Telegraphers' Agreement for the section foremen to have obtained the lineups in question by telephone from the dispatchers. This is so, whatever may be the rule as to similar rules on other properties where the circumstances here present do not exist.

**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, 1894;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That 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 28th day of March, 1950.