

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
CHESAPEAKE DISTRICT**

STATEMENT OF CLAIM: (1) That the Carrier violated the terms of the current Telegraphers' Agreement when on November 13 and 18, 1947, it permitted and/or required an employe not covered by the Telegraphers' Agreement to enter the telegraph office at Millboro, Virginia, at a time the agent-operator was not on duty and to perform service in connection with the grounding, patching and otherwise testing of wires in the Millboro office; and

(2) That the agent-operator M. B. Cater shall be paid for a call on November 13 and 18, 1947, for which service he was improperly deprived, under Rule 27 of the agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date October 16, 1947, as to rates of pay and rules of working conditions is in effect between the parties to this dispute. The agent-operator position at Millboro, Virginia, is covered by said agreement.

On November 13 and 18, 1947, M. B. Cater was regularly assigned to the agent-operator position at Millboro, Virginia, hours 8:30 A.M. to 5:30 P.M., daily with one hour allowed for meals. No other employe under the Telegraphers' agreement was employed at this station. A helper not under the Telegraphers' Agreement was employed at this station with hours 7:00 A.M. to 4:00 P.M.

Between the hours 7:00 A.M. and 8:00 A.M. on November 13 and 18, 1947, at a time when the agent-operator at Millboro was not on duty, but subject to call, the Carrier required a signal maintainer not under the Telegraphers' Agreement to enter the telegraph office of the Millboro station and perform the work of testing and patching of wires by means of a telegraph and telephone switchboard in the office.

On each of these occasions the agent-operator at Millboro promptly filed a claim for a call for the performance of this work of which he was thus denied. The Carrier declined the claims.

POSITION OF EMPLOYES: The Scope Rule of the prevailing Telegraphers' Agreement which embraces, among others, agent-telegraphers, agent-telephoners, and the work performed by them in those classes of employment, is invoked in this dispute.

meant that the interruption was found to be caused by "kinks and nicks in copper wire." At 12:35 P.M. Brown had moved to Bell's Valley and cleared trouble there.

The next item shows that by 12:50 P.M. the wire chief could take the patch out of the dispatcher's phone between JD Cabin and Staunton, releasing the block phone. Taking down of this patch was done by employees under the Telegraphers' Agreement, because it was work being done in connection with and incident to the operation of the lines.

Unquestionably, therefore, Brown was doing all of his work in connection with maintenance and repair of the communication lines, and definitely was not doing work in connection with operation of such lines on November 13, 1947.

The wire chief's report for November 18, 1947, shows that the situation was not so acute as on November 13, 1947, but the same general conditions obtained. The first entry shows that the wire chief patched through employees covered by the Telegraphers' Agreement at 12:05 A.M. Then Maintainer Brown was sent to clear the trouble, reporting the trouble clear at 12:40 P.M.

It is obvious that the Carrier has in no wise sought to circumvent employees covered by the Telegraphers' Agreement in this case. On the other hand, it is plain that such employees were used to patch as outlined by the Board in Award 3524 where such could be done in connection with operation of the communication lines. When testing and other work was necessary in connection with maintenance of the lines or clearing the trouble, maintenance employees were brought in, and such employees pursued their work fully as contemplated by Award 3524.

Therefore, there is no proper basis for the claim of Agent-Operator Cater in this case, and the claim should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The claim is that the Carrier on November 13 and 18, 1947, permitted a Signal Maintainer, not covered by the Telegraphers' Agreement, to perform work in connection with the grounding, patching, and otherwise testing of wires when the Agent-Operator, covered by the Telegraphers' Agreement, should have received a call to return to duty and perform this work. Because of its violation of the Agreement in this matter the Carrier should now be required to comply with Rule 27 with respect to payment for calls.

It is agreed that the Signal Maintainer did enter the office prior to the regular reporting time of the Agent-Operator and did test the circuits through the switchboard panel to locate the trouble. The Carrier stated that this was the simple and direct method for locating trouble after the storms rather than have the Signal Maintainer ascend the nearest pole, select the circuit, and break the circuit and make tests. The organization urges that the testing and patching service inside-the-office belongs exclusively to the Agent-Operator.

Award No. 3524 is cited by the organization as controlling. The Carrier points out that Award No. 3524 involves another railroad and different rules. In the Agreement there considered, unlike the present Agreement, Wire Chiefs and Assistant Wire Chiefs, whose duties require the testing of circuits, were included under the Scope Rule; while in this contract the Scope Rule does not describe the work and the contract does not contain language giving telegraphers the exclusive right to test and patch wires.

Award No. 3524, in laying out certain general rules does set forth a distinction that is logical and practicable:

"On the other hand, such work is not that of the telegrapher when done by Telegraph and Signal Maintainers incidental to and in connection with the maintenance of lines. With these general rules in mind, we will consider the particular facts that brought about this dispute."

In the instant case the Signal Maintainer was instructed to repair the wires. The testing of circuits for the purpose of locating trouble on wires is a necessary and inherent part of the maintenance job. The testing work done here comes clearly within the distinction made in Award No. 3524 because it was "incidental to and in connection with the maintenance of lines." As a secondary consideration, the evidence is that for many years Signal-Maintainers have done patching and testing "incidental to and in connection with the maintenance of telephone and telegraphic circuits, whether inside or outside of telegraph offices." (Affidavit—Carrier's Exhibit "D.")

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 not violated.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of June, 1950.