

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pittsburgh and West Virginia Railway Company that:

(1) The Carrier violated and continued to violate the provisions of the agreement between the parties when it has required and/or permitted and continues to require and/or permit an employe holding **no rights under said agreement to copy and handle track, motor car lineups daily except Sundays, at Bruceton, Pa., prior to the starting time of the regularly assigned agent-telegrapher at Bruceton, Pa.**

(2) The agent-telegrapher at Bruceton, Pa., shall be paid a call under Article 3 (c) of the Agreement each day since June 30, 1947, that lineups have been handled at Bruceton, Pa., by an employe not under said agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of November 1, 1936, is in evidence, copies thereof are on file with the National Railroad Adjustment Board. At Page 11 of said agreement is listed "Agent-Telegrapher" position at Bruceton, Pa., rate of pay \$150.00 per month, subsequently converted to an hourly rate and progressively increased to \$1.642 per hour. The assigned hours of said Agent-Telegrapher are 10:00 A.M., to 6:00 P.M., daily.

At approximately 7:00 A.M. or between 7:00 A.M. and 10:00 A.M. each day, except Sundays and holidays prior to the time the agent-telephoner is assigned to begin his tour of duty, the Section Foreman, an employe not under the agreement, whose headquarters are at Bruceton, Pa., copies by use of company telephone located in a booth adjacent to the station building, motor car line-ups of train movements, Form 1224, which are issued by the train dispatcher and relayed to said Section Foreman through the agent-telegrapher at West Liberty, Pa.

The agent-telephoner was available for service on call basis.

Claims have been filed for "call" payments in behalf of the agent-telephoner at Bruceton, Pa., account work denied him. The claim was disallowed.

POSITION OF EMPLOYES: Employes' Exhibit No. 1, attached hereto and made a part hereof, illustrates clearly the practice of the Carrier requiring and/or permitting employes not under the Agreement to handle (copy) Motor Car line-ups of record at Bruceton, Pa.

Telephoner. This Agent-Telephoner works daily 10:00 A.M. to 7:00 P.M., with one hour lunch period included.

The Employees now make claim that the Agreement has been violated because track foremen operating track motor cars secure lineups from the nearest regularly assigned telegrapher when the Agent at Bruceton is not on duty.

The particular claims presented by the General Chairman all indicate that the lineups were transmitted between 7:00 A.M., which is the time the track foreman go to work and 10:00 A.M., which is the regular starting time of the Agent-telephoner.

Prior to April 11, 1947, it had been the practice of the railroad to transmit lineups directly from the Train Dispatcher to the track foremen. Subsequent to that time, due to a decision by the Third Division of the National Railroad Adjustment Board, the practice on this railroad was changed so that all lineups were transmitted from the Train Dispatcher to the nearest open telegraph office and the lineups were then relayed to the track foreman by the telegrapher in charge of this station.

For several years prior to the instant claims, there had been no telegrapher on duty at Bruceton except between the hours of 10:00 A.M. and 7:00 P.M. The office had been open at other hours temporarily due to the requirements of service during the War. In any event, this was not a case of laying off an employee at a location under the Telegraphers' Agreement and having this work done by a track foreman.

POSITION OF CARRIER: There has been no violation of the Agreement. The lineups in question, which were delivered to the track foreman, were transmitted in every instance by an employee coming within the scope of the Telegraphers' Agreement. If this is the case, and the record so establishes it, what violation has taken place to substantiate this claim?

At the time the Telegraphers' Agreement was written, there was employed at Bruceton only an Agent-telephoner, as is shown under Article XXI of the Agreement, and it has always been the practice for a track foreman at, or in the vicinity of Bruceton, to obtain lineups by telephone when Bruceton station was not open. This was the situation when the Telegraphers' Agreement of 1936 was written and therefore establishes the intent of the Agreement. The Scope Rule of this Agreement was not intended to prevent a section foreman from getting his lineups by telephone. If a section foreman were prevented from getting his lineups by telephone, it would be necessary for each section foreman to have a Telegrapher with him at all times when lineups are received. Clearly such a requirement was not within the contemplation of the parties at the time the Agreement was signed. Such a requirement is certainly not found in the Scope Rule and there is no specific agreement between the parties making any such requirement.

This claim is similar to the case which was handled under Docket No. TE-3350 and which resulted in Award No. 3363 dated December 16, 1946. In that case a similar claim was denied. Award No. 3363 also refers to Awards No. 1145, 1305, 1320 and 1553 which are similar cases in which the claims were denied. We would also like to point out the "Opinion of the Board" in Awards 4265, 4266 and 4267 which are also similar cases in which the claims were denied. The Carrier therefore requests that the Statement of Claim of the Employees be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The material facts are set forth in the submissions and are not in dispute.

The issue presented by the claim: is the receiving by a section foreman at a station where an agent-telephoner is assigned but not on duty, work

reserved to employees under the Agreement of the Telegraphers. The contention of the Organization is that this is work covered by their Scope Rule and reserved to the employees governed by the Telegraphers' Agreement. The Carrier contends that it has always been the custom for the foremen to receive lineups from the dispatcher, and, since April 11, 1947, to receive them from an operator at the nearest open station.

It is asserted by the Organization that "lineups" are communications of record, and this is not denied. Previous Awards have so denominated train lineups (4516 and 4624 are recent expressions by this Division).

The Scope Rule relied upon by the Organization does not define, in terms of the work of Telegraphers; but it is now well established that the work covered is the transmission of communications of record. This includes the sending and receiving of such messages (see Award 4516).

We find, therefore, that receiving a train lineup at Bruceton was Telegraphers' work. As this was performed by a person not under the Telegraphers' Agreement it was a violation of the Agreement. The identical principle is applicable here as was before the Board in Docket TE-3489, Award 3521.

The Carrier has advanced the same argument here with reference to past practice as it did in its submissions under Award 3521. There, the Board said "This does not defeat an affirmative award in the present case, but it does place the parties under the rule announced in Award 3518, Docket CL-3466, with reference to its retroactive effect."

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

Carrier violated the Agreement.

AWARD

Claim (1) sustained.

Claim (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

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