

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 Article 1 (Scope) of the Agreement between the parties, effective November 1, 1936, when it required or permitted persons other than employes coming within the scope of the aforesaid Agreement to handle lineups by telephone at Monessen, Pa., a location where an employe covered by the scope of the Agreement is employed, during the time such next above referred to employe was off duty, on May 16, 17, 22, 23 (two calls), 27, 29, 31, June 4, 5, 10, 11, 13, 17, 18, 19, 20, 1947, and

(2) Agent-operator J. F. Polen, Monessen, Pa., shall be compensated as provided in Article 3 (c) of the Agreement of November 1, 1936, for one call on each of the calendar days listed in 1, except that for the calendar day May 23, 1947, he shall be paid for two calls.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of November 1, 1936, is in evidence, copies are on file with the National Railroad Adjustment Board.

The Carrier maintains a telegraph (telephone) office at Monessen, Pa., manned by two employes under said agreement, namely, an agent-telephoner with assigned hours 10:30 A.M., to 6:30 P.M., and a telephoner with assigned hours 6:30 P.M., to 2:30 A.M., seven days per week.

On each of the dates named in the Statement of Claim, during times when no employe under the agreement is assigned to duty, the section foreman, an employe not under the Agreement, whose headquarters are at Monessen, copied motor car lineups by means of the company telephone located in a booth adjacent to the station at Monessen.

Claims were filed in behalf of J. F. Polen, the regular incumbent of the Agent-Telephoner position, for payment on the basis of "calls" in accordance with the provisions of Article III (c) of the Agreement. The Carrier declined to pay the claims.

POSITION OF EMPLOYES: The following rules of the agreement are invoked in this dispute:

Article I—Scope

"The following rules and rates of pay shall govern compensation, hours of service and working conditions of Telegraphers, Telephoners,

Award No. 1145 of this Division is similar to the instant case, and in the "Opinion of Board" it was stated that "it must be concluded therefore that under the circumstances of this case—including the character and development of the relevant rules and the established practice of the Carrier in the handling of lineups—there has been no violation of the Agreement." (underscoring supplied)

In conclusion, the Carrier must state that the claim as presented should be denied for the following reasons:

1. The Scope Rule of the Telegraphers' Agreement cited by the Employes as the basis of their claim definitely refutes the arguments advanced by them.
2. The Employes have failed to produce any evidence to support their claim that the Carrier has violated Article I (Scope Rule) of the Agreement between the parties, effective November 1, 1936.
3. More than thirty years of practice and ten years of mutual interpretation of the present Scope Rule sustains the Carrier's position.
4. This claim is an attempt on the part of the Employes to require the Carrier to create numerous unnecessary positions which would impair efficiency and with consequent excessive cost of operation.

For the reasons set forth above the Carrier respectfully requests that the Board deny the claims of the Employes.

(Exhibits not reproduced).

OPINION OF BOARD: The essential facts are that track foremen operating track motor cars secured train lineups from the train dispatcher direct, from the station at Monessen when the agent assigned there was not on duty.

The claim is for a "call" payment premised on a violation of the Scope Rule of the Agreement.

By tradition and practice the work of a telegrapher has included the work of transmitting, sending or receiving messages, orders, reports and other communications of record. Train lineups on this property are made of record by the dispatcher; and the foreman copies the lineups on a form provided for that purpose.

A number of Awards of this Division have considered the nature of "train lineups" and where they were made of record, have held them to be communications of record, the transmission of which was the work reserved to Telegraphers (see Award 4516).

The principle involved in Award 3521 is applicable here. The only difference is that in Award 3521 it was a question of receiving and copying train orders, while here we have the question of whether receiving and copying train lineups is the work of Telegraphers. On the authority of Awards 3521 and 4516 we conclude that the foreman performed Telegrapher's work when a telegrapher was available for call.

Careful consideration was given to Award 4791 with reference to the affect of the past practice of foremen obtaining lineups. But in that case the submissions clearly showed that both parties to the Agreement knew, understood and had acquiesced in the practice. Such showing has not been made by the submissions here.

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

The 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.