

Award No. 4927  
Docket No. TE 4966

**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 that,

(1) the Carrier violated the agreement between the parties when it required or permitted employes outside of the scope of said agreement to transmit a report of record from Clairton, Pa., on January 21 and 22, 1948, and

(2) Agent-telephoner B. F. Liptak who was representing the regularly assigned employe under the agreement at Clairton shall be compensated for one call on each of the days, January 21 and 22, 1948, as a result of this violation.

**EMPLOYEES' STATEMENT OF FACTS:** An agreement bearing effective date of November 1, 1938, governing rates of pay and rules of working conditions is in effect between the parties to this dispute.

Clairton, Pa., is a station on the Carrier's railroad located at the end of a branch line, approximately three miles from junction with the main line. There is employed at this station one agent-telephoner under the agreement with assigned hours 9:30 A.M. to 6:30 P.M., one hour out for lunch daily except Sundays, and 4:00 P.M. to 6:00 P.M., on Sundays.

On January 21 and 22, 1948, the Carrier permitted or required conductors of trains turning at Clairton for return trip, at time when the agent-telephoner was not assigned to duty, but was available for call, to transmit direct to the dispatcher by use of telephone outside the office, the following train consists and yard report—reports of record:

“Clairton, Pa.  
January 21, 1948

“W.E.R.  
Rook,

Extra 924-948 West has  
9 Coal Bx, 2 Coal PA, 1 Brick BX,  
3 steel Bx, 4 Oil BX, 1 Toluol RN,  
3 Toluol RN, 1 Sand Bridgeville,  
1 Mty Hop Rook Shop, 1 Scrap Donora,  
2 scrap Monessen, 3 Brick Monessen,  
2 Toluol C Point 120 Tons,

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is an attempt to obtain a change in the agreement without negotiation which is improper.

### CONCLUSION

The carrier has shown that

1. The alleged telephone conversations between the conductor and the train dispatcher were not work to which Telegraphers' Agreement employees have contractual monopoly rights

2. Telephone conversations to and from a point where no telegrapher is employed, between trainmen, enginemen or other employees and nearest telegrapher, or train dispatcher under certain conditions, is simply ordinary railroad operation and not violative of any agreement.

3. The claim is clearly an attempt to force the carrier to establish telegraphers' positions where none are required and could not possibly serve any useful purpose. It is clearly a make-work demand.

4. The entire claim is unfounded, wholly at variance with efficient, intelligent operation, is not supported by any rule, practice or precedent or on any technical or logical premise, and should be summarily denied.

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

(Exhibit not reproduced).

**OPINION OF BOARD:** The claims are premised on the allegation that an employee outside of the Scope of the Agreement with the Telegraphers was required or permitted to transmit a yard report and train consists when a regularly assigned employee was available but not called. It is claimed that this constituted a violation of the Scope Rule of the Agreement and reparation under the provisions of the Agreement for payment of a "call" is requested.

The Scope Rule of this Organization on this property does not enumerate the various duties that fall within the classification of Telegraphers. But by custom such Rule has been generally recognized as embracing the work of sending and receiving messages, reports, orders and other communications of record.

It is claimed by the Organization that the particular consists and yard reports in evidence here were reports of record required by the Carrier in its operation of the railroad; that their transmittal was Telegraphers' work. This is denied by the Carrier, and it asserts that they have no record of any such reports as claimed by the Organization as having been made of record or that they requested or required such reports to be made as claimed.

The Board, with Referee Carter assisting, said in Award 4280:

"The evidence does not show that it actually was made a matter of record or that there was any requirement that it was to be considered a message of record. Assuming for the purposes of this decision without so deciding, that such fact, if established, would support an affirmative award, there is a failure of proof as to this phase of the case."

We must likewise find that there has been a failure of proof.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties of 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

A violation of the Agreement is not established.

#### AWARD

Claims (1) and (2) denied.

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.