

Award No. 4977
Docket No. CL-4889

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

1. That the Carrier violated and continues to violate the Clerks' Agreement at Tift Terminal, Buffalo, N. Y., when on December 19, 1948 it removed the duties of calling crews by telephone out from under the Clerks' Agreement and assigned such work to an employe of another class and craft without conference or agreement with the Committee; and further violates agreement made April 29, 1948 when, in settlement of a previous grievance it restored the work in question to employes under the scope of the Clerks' Agreement.
2. That crew calling should be restored to employes under the Clerks' Agreement and employes Heinze, Zilker, Henry, Clark and Thompson be compensated for wage loss suffered since February 1, 1949.

EMPLOYES' STATEMENT OF FACTS: Prior to September 18, 1945, the force at East Buffalo, N. Y., Crew Dispatcher's office consisted of the following:

Crew Caller	7:55 A.M. to 3:55 P.M.,	20 minutes for lunch
Crew Caller	3:55 P.M. to 11:55 P.M.,	20 minutes for lunch
Crew Caller	11:55 P.M. to 7:55 A.M.,	20 minutes for lunch
Crew Disp-Teleg.	7:00 A.M. to 3:00 P.M.,	20 minutes for lunch
Crew Disp-Teleg.	3:00 P.M. to 11:00 P.M.,	20 minutes for lunch
Crew Disp-Teleg.	11:00 P.M. to 7:00 A.M.,	20 minutes for lunch

The Crew Callers are covered by the scope and operation of the Clerks' Agreement.

The Crew Dispatcher-Telegraphers are covered by the scope and operation of the Telegraphers' Agreement.

Evidence of the Crew caller positions being negotiated within the scope and operation of the Clerks' Agreement is submitted in the following wage agreement negotiated March 1, 1939, at the same time the present agreement became effective; also advertisement of crew caller positions fully supports employes' contention:

and in Award 1314 of this Division:

"Where the duties incidental and normal to a position not under the craft flow out directly to an assistant included in the agreement and taken on where work increased to a point where such assistance was necessary, it would seem that by the same token they could ebb back directly to the original position when the necessity for the assistance no longer existed, provided the duties so involved in the ebb and flow were such as were indigenous to that position—normal and incident to it." (Emphasis added.)

In conclusion, (1) Carrier claims it did not violate the Clerks' Agreement when it permits the duties of calling crews by telephone to be performed by crew dispatchers (telegraphers); (2) that crew calling by telephone in the instant case is not work that belongs exclusively to employees under the Clerks' Agreement; and (3) that the employees, Heinze, Zilker, Henry, Clark and Thompson are not entitled to compensation for wage loss suffered since February 1, 1949.

(Exhibit not reproduced).

OPINION OF BOARD: Under the Agreement with the Clerks' Organization on this property, the parties have in their Scope Rule included among the several classes of employees covered "Crew Dispatchers (except East Buffalo)" and "Train and Engine Crew Callers". The crew dispatchers at East Buffalo are under the Telegraphers' Agreement. When the Agreement was adopted, or shortly thereafter, at East Buffalo there were three positions of crew dispatchers-telegraphers and three positions of "crew callers". The Agreement was adopted as of March 1, 1939. Subsequently and from time to time vacancies in position of "crew callers" were bulletined to the Clerks' Roster; and on January 18, 1944, the Carrier issued a bulletin particularly describing the duties of "crew callers" at East Buffalo which, among others, were catalogued as "calling train and engine crews by telephone and otherwise."

In 1945 the "callers" positions were discontinued and the work of calling the train and engine crews given to the dispatchers at East Buffalo. The Clerks protested and through an exchange of letters and conferences an understanding was reached in May of 1948, replacing a crew caller and providing for yard clerks to perform the outside crew calling. These letters are set out in the submissions and need not be repeated here. In December of 1948 the Terminal was moved to Tift, and thereafter the Carrier discontinued the remaining position of "crew caller" and required the dispatchers (Telegraphers) to do such work, the explanation being that all required crew calling henceforth could be done by telephone. Thereupon, the claim now before this Division was filed.

The contention of the Organization is that the work of crew calling is exclusively reserved to employees under the Clerks' Agreement; while the Carrier contends that inherently it is the work of crew dispatchers and by Agreement the crew dispatchers at East Buffalo are permitted to perform this work.

The Scope Rule has enumerated "Train and Engine Callers" as a class of work covered by the Clerks' Agreement. No exceptions to the coverage of this work by the Agreement is mentioned and, as was said in Award 3506, "There is no****implication that there were outside conditions which deprive the Clerks of the exclusive right to such work****". Under the precedents of Awards 3506 and 4812 the work which is the subject of this claim is exclusively for those under the Clerks' Agreement unless by agreement the parties have authorized employees outside of the Clerks' Agreement to perform the work.

When the Carrier abolished the crew callers at Tift and gave the work to the crew dispatchers (Telegraphers) they assigned as the reason that all crew calling would be done by phone. But whether the work was done by phone or otherwise is unimportant as it is the character of work and not the means of performing it that is controlling.

In order to determine the intent of the parties in their Agreement of May, 1948, with respect to the use of the phone in calling crews by dispatchers (Telegraphers), it is advisable to set out portions of several letters:

From Carrier's letter to the Organization of April 29, 1948, is the following:

"It is further understood our agreement****will not preclude the crew dispatchers at East Buffalo continuing to call crews on the telephone, as this work has always been a duty performed by the crew dispatchers, and they will be permitted to continue doing so. The crew calling by the yard clerks, as referred to above, is in connection with calls which must be made in leaving the office."

The Organization replied on May 3, 1948, in part:

"In connection with the fifth paragraph of your letter about not precluding Crew Dispatcher-Telegraphers from calling crews on the telephone, it is understood in certain instances this may be necessary, but we do not agree the arrangement entered into here, establishes a precedent whereby the calling of crews by telephone is considered as being moved from under the scope of our agreement." (Emphasis supplied)

And the Carrier replied, in part, on May 6, 1948:

"You refer to the fifth paragraph of our letter with respect to the decision rendered not precluding Crew Dispatcher-Telegraphers from calling crews on the telephone. You desire it understood that in certain instances this may be necessary, but you do not agree the arrangement entered into here establishes a precedent whereby the calling of crews by telephone is considered as being moved from under the scope of your agreement."

Your understanding in this matter is correct, and we have no intention of taking the position that the calling of crews by telephone is work which belongs to telegraphers, but it was our position in this particular case that because the crew dispatchers at East Buffalo are classified under the scope of the Telegraphers' Agreement, they do have the right to perform incidental clerical work to their positions, which includes the calling of crews by use of the telephone."

From the foregoing we believe that the parties were in agreement only insofar as (1) "in certain instances" crew dispatchers-telegraphers could do crew calling, and (2) calling crews by telephone was not work of Telegraphers. We do not believe that the parties meant by "certain instances" all of the crew calling by phone at East Buffalo.

The contention that crew calling was incidental clerical work that falls within the category of general clerical work that is the part of regularly assigned duties of Telegraphers was considered by this Division in Award 3506. The Opinion of Board, Referee Douglas assisting, reads, in part, as follows:

"The very use of the terms "train and engine crew callers" designates a limited type of special work and is thus differentiated from general clerical work. The work of calling crews falls into its own special category and is not incidental to other positions. In this instance, therefore, we find the Scope Rule does classify the work to be performed as well as covering generally the positions included within the scope of the Agreement."

"It follows that because of the express terms of the Agreement the work of crew calling cannot now be said to be either incidental or normal to a position covered by some other agreement*****."

For the reasons expressed in that Award (3506) we must conclude that, as the agreement sets up a distinct classification for "train and engine callers", such work may not be considered incidental to the work of another class.

Some reliance has been placed by the Carrier on the fact that crew dispatchers at other terminals do crew calling. But such crew dispatchers, as well as train and engine callers, are under the Scope Rule of the Clerks' Agreement. A combination of such work within the Scope Rule is to be distinguished from authorizing employees not covered by the Agreement to perform the work.

From the facts and the Agreement of the parties, we have concluded that the Carrier was not at liberty to transfer all crew calling at Tift to the crew-dispatchers (Telegraphers).

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 has violated the Agreement.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of July, 1950.