

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad Company, that,

(a) the Carrier violated the provisions of the Telegraphers' Agreement when it required and/or permitted a non-schedule employe to copy track car line-ups at Greene, New York, on June 25, 1948, subsequent dates, at a time when the agent-operator at Greene, New York, was not on duty, and

(b) because of these violations the Carrier shall now pay to the employe, or the employes, who occupied the position at Greene, New York, under Article 5(a) of the Telegraphers' Agreement a "call" commencing on June 25, 1948 and continuing thereafter on all subsequent dates on which these violations occurred at Greene, New York.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties, hereinafter referred to as the Telegraphers' Agreement, bearing effective date of November 1, 1947, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Prior to, on and for a short time subsequent to June 25, 1948, the Agent-Operator's assigned hours were 7 A.M. to 4 P.M. with a lunch hour 10:30 A.M. to 11:30 A.M.

Prior to June 25, 1948, the Agent-operator copied train line-ups for motor car operators and/or section gang foremen. Effective June 25, 1948, the starting time of section gangs was advanced to 6 A.M. Effective Monday, August 9, 1948, the agent-operator's starting time was advanced to 6 A.M. Beginning June 25, 1948 and continuing each week day through August 8, 1948, the Carrier required or permitted a section foreman or motor car operator to copy a train line-up before the Agent-Operator went on duty.

Claim was made that the Agent-Operator be allowed a "call" payment on each of the days said foreman or car operator copied such line-ups. The claim was denied.

POSITION OF EMPLOYES: The facts in this proceeding are simple and not in dispute between the parties. At Greene, prior to August 9, 1948, the Agent-Operator's starting time was 7 A.M. The section foreman went on

Chenango Forks, N. Y., upon request from the Operator at Chenango Forks for the Section Foreman at Greene, New York. For those dates the Carrier has paid the claim. The Carrier will not agree to pay claim for dates which cannot be verified from the records in the Dispatcher's Office at Binghamton. The records in the Dispatcher's Office were carefully reviewed by the Carrier's Supervisor of Wage Schedules in the presence of Operator Biviano on January 18, 1950. Mr. Biviano was the Operator at Chenango Forks on the dates in dispute and when it is alleged track car line-ups were given to the Section Foreman at Greene, New York. Mr. Biviano, when questioned with respect to track car line-ups having been transmitted on the dates in question, was unable to advance any reason why track car line-ups should be given to the Section Foreman if such line-ups had not been authorized by the Dispatcher.

The Carrier's records at Chenango Forks, N. Y. for the period in question have been inadvertently destroyed, therefore, copies of all messages and line-ups for that period are not available for checking. A check of these records would have developed the names of the Maintenance of Way employes to whom the track car line-ups were allegedly transmitted, by whom, and the time transmitted. The fact is, extra gangs were working in the vicinity of Greene, N. Y., and required no line-ups on the dates in question.

POSITION OF CARRIER: There was no violation of the agreement on June 26, July 1, 3, 13, 14, 15, 17, 19, 20, 21, 22, 23, 26, and August 7, 1948, as claimed.

Track car line-ups were not required on these dates because the extra gang was working in the vicinity of Greene N. Y. The only time a track car line-up was required at Greene was when the gang was working some distance from that point and transportation was required on a track car. The work reports of the Roadmaster clearly show that on the dates in question the extra gang was working in the vicinity of Greene when no track car transportation was required.

The Carrier reserves the right to object to any evidence submitted by the Employees in this case to the National Railroad Adjustment Board which has not been submitted to the Carrier on the property. The Carrier refers particularly to copies of track car line-ups alleged to have been transmitted by the Operator at Chenango Forks, N. Y. to the Section Foreman at Greene, N. Y. on the following dates: June 26, July 1, 3, 13, 14, 15, 17, 19, 20, 21, 22, 23, 26 and August 7, 1948.

The Carrier contends an Operator has no right to transmit a track car line-up to any one without the authority of the Dispatcher.

The Employees claim to have in their possession copies of line-ups issued on the fourteen (14) days in dispute by the Operator at Chenango Forks, N. Y. to a Section Foreman at Greene, N. Y. The Carrier is unable to verify any such records. Such information has not been made available to the Carrier for verification.

The Employees having failed to produce evidence of a violation of the agreement on the dates in dispute, the claim should be denied.

OPINION OF BOARD: From June 25, 1948 to August 8, 1948, the Agent-Operator at Greene, New York, was assigned 7:00 A.M. to 4:00 P.M. On that date, the section gang's assignment was fixed from 6:00 A.M. to 3:00 P.M. On August 9, 1948, the Agent-Operator's assignment was changed to 6:00 A.M. to 3:00 P.M. Prior to June 25, 1948 and after August 8, 1948, the section foreman obtained his train line-ups from the Agent-Operator. Between those dates the section foreman obtained them by telephone from the dispatcher. The Organization claims that violations occurred on 37 days. The Carrier acknowledges 23 violations and has paid 23 calls. The present claim is for the remaining days.

The copying of train line-ups by a section foreman under the circumstances here shown is a violation of the Agreement and the Agent-Operator is entitled to a call for each violation. Awards 2934, 3116, 4320, 4516.

Carrier contends that its records show that there were only 23 violations during this period. The Organization contends that it can establish 37 violations by producing copies of 37 line-ups copied by the section foreman during that period. The Carrier refused a joint check or to permit the Organization to check the Carrier's records.

The reasoning announced in Award 4460 is controlling. In that award we said:

"It is contended by the Carrier that there was no available extra man. The Organization contends that there was, but is unable to designate him or them for the reason, as it claims, that Carrier has refused to provide the information or make its records available to the Employees. In this connection, parties are required to present all the facts within their possession and, where either party refuses to do so, a remand ordinarily results if such evidence is necessary to a decision. Consequently, this case will be remanded for a joint check of Carrier's records. If it appears that there was a qualified and available extra employe on one or more of the days stated in the claim, the claim is sustained as to such employe for the days lost. If there was no extra employe available, the position of the Carrier is correct."

For the reasons stated, the claim will be remanded for a joint check by the parties to determine whether line-ups were copied by the section foreman at Greene on the days enumerated in the claim. Claimant is entitled to a call for each day that a violation occurred on such days.

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 employe 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 claim is remanded for a joint check of Carrier's records to determine the number of days, if any, specified in the claim on which the Agreement was violated.

AWARD

Claim is remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1950.