

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

---

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Lines in Texas and Louisiana, that:

- (a) Communications service covering transmitting and receiving messages, orders and/or reports of record by use of the telegraph or telephone constitutes work coming within the scope of the Agreement between the parties.
- (b) The Carrier violated the terms of said agreement when, on February 22, 1949, at 7:30 A. M.; February 28, 1949 at 8:12 A. M.; March 4, 1949 at 8:30 A. M.; and January 30, 1949, at 9:00 P. M., it permitted or required persons not subject to said agreement to transmit and receive by use of the telephone at McAllen, Texas messages and/or reports of record during times employees under the agreement were not assigned to duty.
- (c) J. P. Levens, the regularly assigned telegrapher-clerk at McAllen, Texas, with assigned hours 9:00 A. M. to 5:00 P. M., should have been called to perform this work.
- (d) J. P. Levens shall be paid a call under the provisions of Rule 13-(d) on each of the dates aforesaid, because he was not permitted to perform this work that was his by contractual right.

**EMPLOYES' STATEMENT OF FACTS:** An agreement bearing effective date of October 15, 1940, between the parties was in effect at the time this dispute arose.

On February 22, 1949, February 28, 1949 and March 4, 1949, an employe not covered by the Telegraphers' Agreement at McAllen, Texas, transmitted by the use of the telephone the following message:

"McAllen, Feb. 22, 1949

C&E No. 580—Mission

Pick up ART 22072 vegts at McColl. It will have to be switched

Bonner (agent)"

Telegraphers' Agreement. To literally comply with the Employees' contention that all communication service, or even all communication service covering the transmitting and receiving of messages and/or reports of record, by use of the telephone is work belonging exclusively to employes covered by the Telegraphers' Agreement would necessitate the employment of such an employe to work along side of and with every officer or employe on the railroad who now uses the telephone in the conduct of his duties. The obvious impracticability and absurdity of such a situation should be sufficient to prompt an unqualified denial of the Employees' contention.

The claim here presented in favor of Telegrapher Levens based upon the contention that a clerical employe at McAllen transmitted information via the telephone in violation of Telegraphers' Agreement has no more justification, merit or basis than the employment of an additional employe covered by the Telegraphers' Agreement as referred to next above. It should also be borne in mind that there is no rule in the Telegraphers' Agreement on this property to support this or any other similar claim. The claim should, therefore, be denied.

**OPINION OF BOARD:** On the dates named in the claim an employe of the Carrier, who was not under the Telegraphers' Agreement transmitted by telephone messages to the train crew at Mission. These messages were in the nature of advices that cars were ready to be picked up at McAllen. No permanent record is made of these messages by the train crew or the office at McAllen. The Carrier employs the claimant at McAllen as telegrapher with hours 9:00 A. M. to 5:00 P. M., daily, and a second trick telegrapher with assigned hours of 6:00 P. M. to 2:00 A. M., daily except Sunday. The messages, the sending of which is the subject matter of this dispute, were sent between the hours of 7:50 A. M. and 8:30 A. M. when no telegrapher was on duty. The claim for a "call" is premised on provisions of the Telegraphers' Agreement, the pertinent portions of which are set forth in the submissions. The essential question is whether the Scope Rule was violated.

The Board also has for consideration a claim for a "call" premised on the fact that a member of the clerical staff at McAllen delivered messages to Western Union for transmission to Houston, requesting that certain cars enroute be diverted from one consignee to another. These messages were filed with Western Union at 9:00 P. M. on January 30, 1949, when no telegrapher was on duty at McAllen. Some time prior to the sending of these diversion messages, the Carrier had, after conference with the Telegraphers, agreed that telegraphers would handle diversion messages.

The contention of the Petitioner is that the messages telephoned by the clerk was work falling within the scope of the Telegraphers' Agreement. The contention of the Carrier is that the Telegraphers do not have the exclusive right to the work of transmitting messages or communications by telephone, and that the particular messages here involved were not messages of record respecting movement or control of transportation; that the diversion messages sent by Western Union was based on past practice.

The claim is in two parts: one relates to the use of the telephone by a clerk in sending messages to a train crew; and the other relates to farming out the transmittal of diversion messages.

The Scope Rule does not define work covered by the Agreement, but lists the classes of workers included. But of necessity the subject matter of the contract is work; and to define such, recourse has been had to the kind and character of work usually and customarily performed by the class of employe included in the Scope Rule. Telephone operators (except switchboard operators) and agent-telephoners are included. But this does not mean all work of transmitting messages by telephone is included in the Scope Rule (Awards 603, 652, 653, 4280).

The telephone is a convenient and ready way to communicate; its use requires no training. Consequently when this Board has been called upon to interpret the Scope Rule of the Telegraphers, such as is here involved, with respect to the work of transmitting communications by telephone, it

has recognized that every use of the telephone was not intended as Telegraphers' work and, in general, has confined the application of the rule to the work of transmitting or receiving messages, orders or reports of record by telephone in lieu of the telegraph. See Awards 4516, 4280 and 1983.

We are here concerned with the transmittal of a message which is in the form of a notice that cars at McAllen are ready to be picked up for movement. There is no direction given as to where or by what route the cars are to be moved. The Carrier asserts that the messages are but substitutes for verbal directions that customarily are given when the train crew reached McAllen and the sending of such was for the convenience of the train crew. There is a dispute between the parties as to whether the messages were made a matter of record. The claimant asserts the affirmative, and the Carrier denies that such messages were "of record." We cannot resolve these conflicting statements of fact.

On the other hand, a failure to record a message or report which should have been made of record would not alter the essential character of the work. But the messages sent by the clerk to the train crew at Mission are not similar in character to the communications which affect the operation of trains, such as train orders and other messages and reports that affect the safety of persons and property and by their very nature should be made of record. Because of the nature of the messages and a failure of proof as to whether the Carrier required them to be made of record, we must conclude that the claim for a call on February 22, 28, and March 4, 1949, is not supported by the record.

With respect to sending the diversion messages by Western Union, a different situation exists. On November 2, 1939, the Carrier's General Manager agreed that "diversions" would be handled by telegraphers. This was confirmed by Assistant General Manager's letter of August 8, 1940. Thus, prior to the Agreement of October 15, 1940, the parties had agreed that the sending of diversion messages was within the Scope Rule of the Telegraphers' Agreement. While, under Article 37 of the Agreement, previous Agreements were superseded, nevertheless this kind of work having been given to telegraphers, and no specific provision denying that purpose having been made, it remains within the scope of work of telegraphers. For this reason the claim for a "call" on January 30, 1949, is valid.

**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

That the Agreement was violated to the extent indicated in the Opinion of the Board.

#### AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 11th day of January, 1951.