

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Denver and Rio Grande Western Railroad Company; that,

(1) the Carrier violated the terms of the Telegraphers' Agreement on April 27, 28, 29, 30; May 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 23, 27; June 1, 4, 8, 14, all in 1949, when the Carrier required or permitted switch foremen employees not coming under said Agreement to copy lineups by telephone at Malta, Colorado, outside of the assigned hours of the incumbents of the telegraph schedule positions at that point; and,

(2) in consequence of said violation the Carrier shall be required to compensate the incumbent of the position of telegrapher, on the "call" basis on each of the dates aforesaid because he was not permitted on those dates to perform the work that was his under the Agreement.

EMPLOYEES' STATEMENT OF FACTS: An agreement hereinafter referred to as Telegraphers' Agreement by and between the parties bearing a date of June 1, 1946, is in evidence, copies thereof are on file with The National Railroad Adjustment Board.

The working hours at Malta are 6:50 A. M. to 2:50 P. M. for the position of agent-telegrapher and 2:50 P. M. to 10:50 P. M. for the position of telegrapher. C. C. Jones and W. A. Jones were the incumbents of the respective positions. On the dates listed in the Statement of Claim the Carrier required switch foremen, employees not covered by Telegraphers' Agreement, to obtain lineups of trains and consists of trains at Malta outside of the assigned hours of the incumbents of the telegraph schedule positions from the dispatcher.

The dispatcher is located at Salida, Colorado and these lineups were necessary for the switch foremen in the performance of their duties. The Organization filed claims for "calls" for each of the dates shown in the Statement of claim that lineups were copied by employees not covered by the Agreement. The Carrier declined the claims.

POSITION OF EMPLOYEES: The Basis of the claim is as follows: Malta is located on the main line of the Grand Junction Division of the Denver & Rio Grande Western Railroad and is the junction point for a branch line to Leadville which is 4.9 miles from Malta. Business from this branch line, that is, loaded and empty cars, are moved by switch engines from Leadville and are

Telegraphers do not have the exclusive right to handle all telephone conversations. This principle has been firmly established by your Board.

In Award 4737, your Board states:

"OPINION OF BOARD: * * * As has been frequently noted, the Scope Rule of the Telegraphers' Agreement does not purport to specify the work encompassed within it. Except where limited or extended by negotiation, it includes the traditional and customary work of the craft and it has to do with communication service involved in the operations of the Carrier, comprehended by the words 'messages, orders or reports of record.' When the telephone came into use, it not only took over the work formerly performed by telegraphers, but added new facility and convenience of communication resulting in service which had not theretofore been performed by telegraphers. The communication involved in this claim concededly had no connection whatever with the actual operation of the railroad. It was not sent for the purpose of effecting the movement of any train, or the shipment or diversion of any freight, or for the protection of any employees or of the public, and it was not for any purpose of corporate records, but solely to extend a courtesy to a customer, to make for his convenience and the good will of the Carrier. There is no showing that such information was traditionally within the exclusive control of telegraphers or that it was customarily performed by them, or at all, prior to the advent of the telephone, and for us now to sustain this claim would shackle and penalize the Carrier in communications having no connection with the operation of the railroad or with any contract obligations but of importance, both to the Carrier and the Employees, only in the development of business and good will."

During the period of time The Hinman Brothers were loading slag at Leadville the switch foreman on the 10:45 P.M. to 6:45 A.M. assignment on occasions called to determine whether there were slag empties about to arrive at Malta so that he would be able to take them to Leadville and to set them to the slag pit for loading and thus avoid delay to the Construction Company.

There is no merit to this claim and it should be denied.

As this claim was not discussed with Carrier prior to its submission to the Board, Carrier is not in a position to state that all data herein has been discussed with Organization and Carrier reserves the right to answer all data submitted in Organization's position.

OPINION OF BOARD: There were two shifts of telegraphers assigned at Malta, Colorado, a main line station. On the days mentioned in the claim, a switch engine operating for the most part outside the assigned hours of the telegrapher position, among other duties, handled empty slag cars to Leadville, a point on a branch line heading out of Malta. The switch crew foreman in charge of this crew was required to telephone the dispatcher at Salida to obtain information about the arrival of trains and the consist thereof. Employees claim that the foreman secured and copied train lineups, whereas Carrier asserts that the foreman merely called the dispatcher to determine if slag cars were about to arrive at Malta so they could be taken to Leadville. Employees file claim alleging a violation of the Scope Rule.

We think the conflict of fact with respect to whether the communication which the switch crew foreman received from the dispatcher was technically denominated a train lineup is immaterial. The information received was equivalent to that which would be contained in a train lineup. As a matter of fact even more, for the consist of the train was also obtained. Whether the switch crew foreman made a record of the information received from the dispatcher is of no moment since the essence of the violation (if there be one) is in the unauthorized use of the telephone.

It is clear from the record that if a telegrapher had been on duty at Malta during the hours this switch crew was operating, he would have handled the communication with the dispatcher since it is shown that switch crews working at Malta received lineups from the telegrapher or agent-telegrapher on the first and second tricks, and the involved communication is indistinguishable from the receipt and transmission of lineups insofar as the Telegraphers' Scope Rule is concerned. Referee Carter in Award 4516 very thoroughly analyzes the basis upon which the transmission and receipt of train lineups by telephone, under some circumstances, is considered within the Scope of the Telegraphers' Agreement and under others outside thereof. The Scope Rule there involved and that here involved are similar with respect to classifications of employees covered. On the basis of the principles enunciated in that Award, the services performed by the crew foreman in communication with the dispatcher, under the circumstances herein present, were clearly in violation of the Telegraphers' Agreement.

The claim will be sustained on the dates mentioned in the claim, when the assigned telegrapher was available for a "call."

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 Carrier violated the Agreement.

AWARD

Claim sustained as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of February, 1951.

DISSENT TO AWARD NO. 5230; DOCKET NO. TE-5266

This award holds that the essence of the violation (if there be one) is in the unauthorized use of the telephone.

This Board has repeatedly held that the Scope Rule of the Agreement, such as is here in evidence, does not give to telegraphers the sole and exclusive right to the use of the telephone and that the essence of the violation (if there be one) is whether the telephone conversations were or should have been considered communications of record.

The record here does not establish that the telephone conversations were or should have been considered communications of record.

The award is clearly erroneous and we are in disagreement therewith.

(s) J. E. Kemp
(s) C. P. Dugan
(s) A. H. Jones
(s) R. H. Allison
(s) R. M. Butler