

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Illinois Central Railroad, that

(1) The Carrier violated the provisions of the agreement between the parties when it required or permitted a section foreman, an employe holding no rights under said agreement, to copy and handle lineups by telephone at Moweaqua, Illinois, a location where an employe covered by the scope of the agreement is employed, during the time such next above referred to employe was off duty, on December 18, 20, 21, 22, 23, 24, 27, 28, 29, 30, 1948, January 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 21, 22, 24, 25, 26, 27, 28, 1949, and

(2) J. J. Novota, regularly assigned agent-operator at Moweaqua, Illinois, shall be compensated as provided in Article 3, Rule 10-(a) of the Agreement of June 1, 1939 for one call on each of the calendar days listed in the above paragraph 1.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of June 1, 1939 is in evidence, hereinafter referred to as the Telegraphers' Agreement, copies thereof are on file with the National Railroad Adjustment Board.

J. J. Novota, claimant, was the regularly assigned agent-operator at Moweaqua, Illinois, on the days named in the statement of claim, with assigned hours 7:15 A.M. to 4:15 P.M. with one hour allowed for meals. Prior to Novota's assigned starting time of 7:15 A.M., a section foreman, an employe not under the Telegraphers' Agreement, whose headquarters are at Moweaqua, copied train lineups by telephone on each of the days specified in this claim at a time when agent-operator Novota was not on duty.

Claims were filed in behalf of claimant J. J. Novota, the regular incumbent of the agent-operator position, for payment on the basis of "calls" in accordance with the provisions of Article 3, Rule 10 (a) of the Telegraphers' Agreement on the ground that he was available and entitled to have performed this work but was not called. The Carrier declined to pay the claim.

POSITION OF EMPLOYES: The facts in this proceeding are simple, and in view of the majority of previous decisions in similar instances, which

There is no basis in support of this claim and to do other than completely deny the claim in the absence of a rule would be changing the arrangement as written. The necessity for a change in the schedule rules to sustain the claim has been recognized by the Employes by their attempt to change them by negotiations as well as the recognition of the former and present General Chairman of the practice under the rules over the years.

It has been held in many awards by the Third Division that the purpose of the Adjustment Board is not to make new rules but, instead, to interpret them and apply them to the facts of the particular cases. See Third Division Awards 1299, 1682, 1813 and 2335. It was held in Award 2335 that, "For this Division to require reparation payments to all clerks under such circumstances would compel its entrance into a field of contract making—a field entirely foreign to the purpose of the Board." Therefore, the Board is without authority to make contractual obligations not agreed to between the parties, nor has the Board the power to create quasi-contractual obligations.

This claim should accordingly be denied inasmuch as there is no violation of the controlling agreement, and the Employes recognized and acquiesced in the established practice and procedure for over thirty-five years, during which time the agreement was revised fifteen (15) times without the inclusion of the provision they are now attempting to have your Board write into their contract.

(Exhibits not reproduced.)

OPINION OF BOARD: This submission differs factually from that submitted by the same parties in Docket No. TE-5291, subject of Award No. 5407, only in the following respects: Here the Section Foreman had a key to the station allegedly furnished by Carrier. After listening in on dispatcher's broadcast of train lineups and copying same, he left one copy for the information of the Agent-Operator. The difference in facts is immaterial and what we have said in our Opinion in the beforementioned Award likewise applies here and need not be repeated nor elaborated upon.

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 Employes involved in this dispute are respectively Carrier and Employes 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 use of the dispatcher's circuit at a station where an assigned Operator is off duty but available for a call by an employe not under the Telegraphers' Agreement to obtain train lineups is a violation of the Agreement between these parties and entitles the Operator to payment for a call on each of the dates stated.

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 27th day of July, 1951.