

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chesapeake & Ohio Railway Company:

(1) That agent-operator E. C. Phillips, Okeana, Ohio, shall be paid calls under Rule 27 of the current Telegraphers' Agreement for September 13, 14, 15, 16 and 17, 1948, of which calls he was improperly deprived because a section foreman, an employe not coming within the scope of the Telegraphers' Agreement, was permitted and/or required by the Carrier, in violation of the terms of the Telegraphers' Agreement, to copy a line-up of train movements on those dates at Okeana from the operator at Shandon by means of the telephone at a time the claimant was not on duty;

(2) That agent-operator J. F. Burke, Blountsville, Ind., shall be paid calls under Rule 27 of the current Telegraphers' Agreement for September 18 and 20, 1948, of which calls he was improperly deprived because a section foreman, an employe not coming within the scope of the Telegraphers' Agreement, was permitted and or required by the Carrier in violation of the terms of the Telegraphers' Agreement to copy a line-up of train movements on those dates at Blountsville from the operator at Henry, Ind., by means of the telephone at a time the claimant was not on duty;

(3) That agent-operator B. L. Schulze, Marion, Ind., shall be paid calls under Rule 27 of the current Telegraphers' Agreement for September 17, 18, 20, 21, and 22, 1948, of which calls he was improperly deprived because a section foreman, an employe not coming within the scope of the Telegraphers' Agreement, was permitted and or required by the Carrier in violation of the terms of the Telegraphers' Agreement to copy a line-up of train movements on those dates at Marion from the operator at Deer Creek and or Phoenix, Ind., by means of the telephone at a time the claimant was not on duty; and

(4) That agent-operator J. F. Roberts, LaCrosse, Ind., shall be paid calls under Rule 27 of the current Telegraphers' Agreement for September 22, October 1 and 2, 1948, of which calls he was improperly deprived because a company lineman, an employe not coming within the scope of the Telegraphers' Agreement, was permitted and or required by the Carrier in violation of the terms of the Telegraphers' Agreement to copy a line-up of train movements on those dates at LaCrosse from operator at "QN" Tower by means of the telephone at a time the claimant was not on duty.

tions, explicitly stated, upon the carrier, but these restrictions are specifically made applicable only to the handling of train orders. No persuasive consideration has been presented for assuming, as contended by the employes, that this rule with regard to train orders was designed to restrict the rights of the employes, as established by the scope rule, rather than those of the Carrier, by way of express definition of the scope rule in controversial situations, and that therefore the scope rule not only applies to such handling of line-ups as is here involved but is more comprehensive in its restrictions upon the carrier in connection with line-ups than it is in connection with train orders." (Emphasis supplied)

Thus, in rendering Award 1145, your Board held that the Scope Rule was not all inclusive and that the use of the telephone by motor car operators in securing line-ups from telegraph operators did not constitute a violation of that rule.

In handling this case the Organization relied on Award 3881. Your Board ruled in that award that under the Scope Rule on the carrier involved the work in question belonged exclusively to the Telegraphers. On this carrier your Board has held that it does not. Furthermore, in Award 3881 the Referee had the mistaken impression that the "line-ups" pertained to control over transportation movements. On this carrier the "line-ups" do not govern transportation movements, i.e., movement of trains, and your Board has so held in Award 1145.

That the carrier has fully complied with Award 1145 is not denied by the Organization.

It is the position of the carrier that the principle involved in the instant claim has been settled on this property by your Award 1145 and the instant claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises because section-foremen and in one instance a lineman secured train line-ups from an Operator at an adjacent station prior to the time the Operator at the station where said line-ups were received reported for duty.

The same question as here involved was presented to this Board in Award 1145 where claims were made on behalf of Telegraph Operators because of motor car operators copying train line-ups over the telephone from Operators at adjacent stations under the same conditions as are present in this dispute. In that Award the claim of the Employes was denied.

The Employes urge us to make an Award in this instance at variance with Award 1145 because of the holdings of subsequent sustaining Awards involving other Carriers and other Agreements. The Employes contend that such Awards, particularly the more recent ones, reflect a different and more logical view of the coverage of the Scope Rule of the Telegraphers' Agreement than Award 1145.

We have carefully reviewed the record in the docket upon which Award 1145 was based. We find therein a lengthy recital of what the practice has been on this particular property with respect to operators of motor cars obtaining line-ups from Operators at telegraph stations. We find from that record that on this property, after the telephone began to replace the telegraph as a means of communication at different locations on Carrier's right-of-way, the first Agreement between this Carrier and the Telegraphers was effective on January 1, 1912. At that time the classifications of telephoners and agent-telephoners were listed in the Scope Rule of the Agreement. Subsequently the classification of telephone-operators (except switchboard operators) was added at least as early as March 15, 1923. The practice on the

property since the advent of the telephone according to the record in Award 1145 was for motor car operators to obtain line-ups from Operators by telephone from any station convenient for them without regard to whether or not there was an Operator on duty at the station where the line-up was copied. Since 1912 and up to the date of Award 1145 at least eleven Agreements were entered into between this Carrier and the Telegraphers and since the latter date the Agreement affecting this dispute, effective October 16, 1947 has been consummated. These Agreements carried forward the same Scope Rule without material change with respect to classifications covered. Thus, in the instant case we are confronted with a factual situation not unlike that which faced us in Award 4791. What we had to say there is equally applicable here and the principles which formed the basis for our Opinion in that case are controlling here. We, therefore, find that a denial Award is in order. It should be clear, however, that this finding affects only the handling of train line-ups and not train orders or other communications of record. Further, this finding is based upon the historical background on this property and is not intended to apply with respect to other properties or agreements where the circumstances here present do not exist.

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 Employee involved in this dispute are respectively Carrier and Employee 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of December, 1951.