

Award No. 5583

Docket No. TE-5494

**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 that agent-operator C. P. Knight, Renick, West Virginia; agent-operator Charles Cox, Jr., Seebert, West Virginia; agent-operator C. I. Sweet, Marlinton, West Virginia; and agent-operator P. F. Long, Cass, West Virginia, each shall be paid a call under Rule 27 of the current Telegraphers' Agreement for December 21, 22, 23, 24, 28, 29, 30 and 31, 1948; January 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29 and 31; February 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 24, 25, 26; March 1, 3 and 4, 1949, of which they were improperly deprived because section foremen, employes not coming within the scope of the Telegraphers' Agreement, were required and or permitted by the Carrier in violation of the terms of the Telegraphers' Agreement to copy a line-up of train movements on those dates at Renick, Seebert, Marlinton and Cass simultaneously from the operator at Ronceverte, West Virginia, by means of the telephone at a time the claimants were not on duty.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of October 16, 1947, superseding all previous agreements in effect prior to October 16, 1947, is in effect between the parties to this dispute.

The schedule of positions and rates of pay attached to and constituting a part of that agreement lists at page 6 the following Clifton Forge Division positions:

Renick	Agent-Operator
Seebert	Agent-Operator
Marlinton	Agent-Operator
Cass	Agent-Operator

These stations are located on the Greenbrier Sub-Division of the Carrier's Clifton Forge Division, which extends from Whitcomb, a point on the main line 2.8 miles east of Ronceverte, to Bartow, 98.1 miles east of Whitcomb. Renick is 27.6 miles east of Ronceverte. Seebert is 21.0 miles east of Renick. Marlinton is 10.3 miles east of Seebert. Cass is 24.6 miles east of Marlinton.

Assigned hours of the Agent-Operators at Renick and Marlinton are 8:30 A.M. to 5:30 P.M. daily except Sunday; and at Seebert and Cass are

as well as the work of transmitting them to the motor car operators, was performed by employes subject to the agreement. In essence, then, it is the contention of the employes that delivery of the line-ups to the motor-car operators may not properly be made by telephone communication between the motor-car operators and telegraph operators located at points other than those where the motor-car operators are stationed. This contention, which, if upheld, might necessitate the assignment of telegraph operators at all points where line-ups are found to be necessary, is urged by the employes despite the provisions of Rule 58 of the Agreement and the long-established practice of the carrier in this connection.

"Rule 58, captioned Telephones, which displaced an earlier rule captioned Using Telephone, imposes in this regard express restrictions, 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 right 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 rule 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: The facts, applicable rules and circumstances here present are practically identical with those involved in Award No. 5582. Our Opinion and Findings in that award are equally applicable here.

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 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.