

Award No. 5584

Docket No. TE-5495

**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 and Ohio Railway,

- (1) That agent-operator H. R. Cain, Merrillville, Indiana, shall be paid a call under Rule 27 of the current Telegraphers' Agreement for April 26, 29, 30, 1949; May 2, 3, 4 and 5, 1949, of which he was improperly deprived because a section foreman, an employe not coming within the scope of the Telegraphers' Agreement, was 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 Merrillville from the operator of Beatrice, Ind., by means of the telephone at a time the claimant was not on duty; and,
- (2) That agent-operator B. T. Reder, Malden, Indiana, shall be paid a call under Rule 27 of the current Telegraphers' Agreement for April 26, 27, 28 and 29, 1949, of which he was improperly deprived because a section foreman, an employe not coming within the scope of the Telegraphers' Agreement, was 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 Malden from the operator at "QN" Tower and/or Beatrice by means of the telephone at a time the claimant was 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 19 the following Chicago Division positions:

"Malden —Agent-operator
 2nd operator
 3rd operator

Merrillville—Agent-operator
 2nd operator
 3rd operator"

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 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: 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.

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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.