

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Hubert Wyckoff, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad Company that:

- (1) The Carrier violates the terms of the prevailing agreement between the parties when, beginning April 21, 1949, and continuing each work day thereafter, it requires and/or permits Section or Maintenance Gang Foremen, employes not covered by said agreement, to copy lineups of train movements at Union City, Oklahoma, by use of the telephone located outside the telegraph office, at a time when the regular assigned agent-telegrapher is not on duty.
- (2) In consequence of this violation, the carrier shall pay the Agent-Telegrapher at Union City, Oklahoma, one call under Rule 13 of said agreement beginning April 21, 1949 and each work-day thereafter that said Foremen are required and/or permitted to receive and/or copy lineups of train movements at this point.

**EMPLOYES' STATEMENT OF FACTS:** There is in evidence an agreement by and between the parties hereto, bearing the effective date of August 1, 1947, as to rules governing working conditions, and of September 1, 1947 as to rates of pay, copies of which are on file with your Board.

At Union City, Oklahoma, the sole employe coming within the scope of the Telegraphers' Agreement is an Agent-Telegrapher. Prior to the year 1946 this employe was assigned and worked a day-time tour of duty. Division time tables prior thereto show his assigned hours to have been 6:45 A.M. to 3:45 P.M., later 8:00 A.M. to 5:00 P.M. enabling the incumbent Agent-Telegrapher to be on duty to copy and deliver to Gang Foremen the morning lineups of train movements, issued by the Train Dispatcher by telephone from Fort Worth, Texas, at or about 8:00 A.M. each working day. The Agent-Telegraphers' position was changed from a day to a night assignment, exact date of the change unknown to the Organization. Since the change assigned night hours have varied, first being 8:30 P.M. to 5:30 A.M., later 8:00 P.M. to 5:00 A.M. and finally, as now constituted, 6:30 P.M. to 5:30 A.M., each assignment bearing the usual one hour meal-intermission. This night assignment prevented the incumbent Agent-Telegrapher from being regularly on

**CARRIER'S STATEMENT OF FACTS:** Under date of August 22, 1949, General Chairman Christian advised carrier's Manager of Personnel that at 8:07 A.M., April 21, 1949, Section Foreman at Union City, Oklahoma, copied lineup direct from dispatcher at Fort Worth and that claim was filed by Local Chairman on April 23, 1949, in behalf of Agent-Telegrapher W. L. Powell, for one call at his prevailing rate.

Agent-Operator at Union City has been assigned 6:30 P.M. to 3:30 A.M. for a considerable number of years.

Claim was declined January 12, 1950.

**POSITION OF CARRIER:** An agreement between the carrier and the employes of the carrier represented by The Order of Railroad Telegraphers, bearing an effective date of September 1, 1947, is on file with your Board and by this reference is made a part hereof.

Petitioner evidently alleges the Section Foreman copied a lineup. We have no record of this. We assume petitioner will quote the lineup actually copied by the foreman.

In our declination of this claim, we pointed out to General Chairman Christian that the Section Foreman did not telephone the dispatcher to obtain the lineup, but obtained the lineup by listening on the telephone at the time the lineup was transmitted to telegraphers and that it has been a long established and evidently unprotested, practice at Union City for this to be done. This practice has extended over a period of several years that the Agent-Operator at that station has worked from 6:30 P.M. to 3:30 A.M., and the practice has been followed during those years until the time of the instant claim without any complaint of record having been made by the employes represented by petitioner.

It is hereby affirmed that all data herein contained is known to the employes representative and is hereby made a part of this dispute.

(Exhibits not reproduced).

**OPINION OF BOARD:** The Carrier is resisting this claim with no visible support except some dissents to an impressive array of sustaining awards (Awards 604, 919, 941, 1261, 1268, 1281, 1284, 1303, 1552, 1671, 1720, 1721, 1722, 1752, 3116, 3199, 3671, 3881, 4506, 4018, 4320, 4516, 4772, 5407). Four of these awards were made on claims arising on this same property (Awards 919, 941, 3199 and 4506).

The claim is supported by the evidence and should be sustained Monday through Friday, beginning April 21, 1949 and continuing until the violation of the Agreement is corrected, except for days when no lineups were transmitted by the Train Dispatcher or when no section gang worked or when no trains were operated.

**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 Agreement was violated as above found.

## AWARD

Claim sustained in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division.

ATTEST: A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 8th day of February, 1952.

## DISSENT TO AWARD 5639, DOCKET TE-5587

This Award is based upon the Opinion that, with the single exception shown, "The Carrier is resisting this claim with no visible support."

The record shows as follows:

- (1) That the Carrier stated and the Organization did not deny that the practice existed at Union City without protest or complaint over a period of several years.
- (2) That the Organization admits the Scope Rule does not "spell out" work embraced within the terms of the Agreement which is consistent with findings of this Division in many awards.
- (3) That Rule 24 is the only rule in the Agreement which confers exclusive jurisdiction over work to Telegraphers and Train Dispatchers. It reads:

"Rule 24. HANDLING OF TRAIN ORDERS. No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed, can be promptly located and is available, except in an emergency, in which case the telegrapher will be notified and paid for the call."

- (4) That obtaining train lineups is not "handling train orders."
- (5) That no rule of the Agreement prohibits Section Foremen from obtaining lineups.
- (6) That, if such a prohibition had been intended, a rule to cover, such as Rule 24, would have been necessary.
- (7) That the sustaining of the claim is equivalent to writing a new rule or revising Rule 24 to justify payment of a call when Section Foremen obtain lineups. The Organization failed to secure such a rule in 1947 when the Agreement was revised.

/s/ W. H. Castle

/s/ A. H. Jones

/s/ R. M. Butler

/s/ J. E. Kemp

/s/ C. P. Dugan