

Award No. 5660

Docket No. TE-5642

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Lines in Texas and Louisiana, that;

(a) The carrier violated the provisions of the Agreement between the parties, dated October 15, 1940, when it required or permitted an employe not covered by scope of the agreement to transmit by the use of the telephone a message at McAllen, Texas, at 6:00 P. M., April 5, 1950.

(b) Telegrapher J. P. Levens working the position of first trick telegrapher, McAllen, Texas, be paid a call under the provisions of Rule 13 (d) account of this violation.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date October 15, 1940 was in effect between the parties at the time this dispute arose.

On April 5, 1950 an employe not covered by the Telegraphers' Agreement at McAllen, Texas, transmitted by the use of the telephone the following message:

"McAllen 6pm—April 5, 1950

C. L. Shortridge Houston
G. Scott Houston

From here No. 116 date remains of Robert McKay under check No. 11720, destination Paris, Ky., routed Houston I.G.N., L V Texarkana MOP, St. Louis B & O, Cincinnati L & N to destination. Continue advice, no escort JT CLS CS (signed) Bonner—K."

Telegrapher-Clerk J. P. Levens was assigned at McAllen and was available for service at the time this communication of record was sent from McAllen; he should have been called to handle the work which is covered by the scope of the Telegraphers' Agreement. Claim for payment for a call payable to Levens is denied by the Carrier.

POSITION OF EMPLOYES: It is the position of the Employes that the carrier violates the Scope Rule, and other rules as well, of the Telegraphers'

information has never been assigned to any particular class of employes, nor has it ever been performed by any class of employes exclusively; therefore, it is work which may be performed by any class of employe who, from time to time, may be required to do so as the occasion may indicate, without violation of the Scope Rule of any collective bargaining Agreement now in effect on this Carrier.

Data herein submitted, and which is made a part hereof, have been discussed in substance with the Employees.

OPINION OF BOARD: This case presents the question whether a telegrapher, who was available but off duty, should have been called to transmit a message relating to the shipment of a corpse.

The corpse was shipped from McAllen, Texas to Kentucky via Houston, Texas. The message was transmitted by telephone by a clerk from McAllen to another clerk in the Baggage Room at Houston. Neither clerk was covered by the Telegraphers' Agreement. The message reads:

"McAllen 6PM APL 5-1950

C. L. Shortridge Houston
C. Scott Houston

From here No. 116 date remains of Robert McKay under check No. 11720 destination Paris Ky routed Hou IGN-LV TP Texarkana MOP St Louis B&O Cincinnati L&N to destination. Continue advice. No escort Jt Cls C S

Bonner K."

The Scope Rule reads:

"Rule 1. Scope. (a) This agreement will govern the employment and compensation of Relay Office managers, assistant managers, wire chiefs, telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators, staffmen, printer and traffic supervisors, operators of teletype or other mechanical telegraph transmission or reception appliances located in telegraph offices; and such agents and assistant agents (freight and ticker, as may be designated herein).

"The word 'employes' as used in these rules will apply to all of the foregoing classes and refers only to the employes covered by this agreement.

"(b) The classification of employes as to occupation is indicated in Rule 37 of this agreement."

FIRST. It is admitted by the Telegraphers that the Scope Rule does not cover all communications by telephone. It has been said that the use of the telephone is reserved to telegraphers to the extent necessary to protect the work within the Telegraphers' Agreement which was being endangered by the increased use of telephones in place of telegraph instruments. The rule generally laid down to describe telephone work so reserved to telegraphers is that the use of a telephone to transmit or receive "messages, orders or reports of record" belongs exclusively to telegraphers (United States Railroad Administration, General Order No. 27, Supplement No. 13, Interpretation No. 4).

This general rule may be limited or enlarged by negotiation, such as by a specific rule dealing with employes entitled to use the telephone "in connection with the movement of trains" (see Award 4280). There is no such specific rule in the Agreement before us here.

SECOND. While it does appear that the message in question was reduced to writing, it does not appear that there was any requirement that it was to be considered a message or report of record. The mere fact that somebody reduces the substance of a telephone call to writing does not make it a message of record. Nor does it appear that there was any requirement that such a message be sent.

The real matters of record relating to this shipment were a baggage check and a railroad ticket. The message added nothing to them. Visual inspection of the parcel would have disclosed what it was, all along the line. The baggage check and the railroad ticket contained all the information necessary to show the point of shipment, the route and the destination. And whether the shipment was escorted or not was a fact which had to be ascertained by conductors and baggagemen independently of any message.

The case might be different, if the shipment had already gone with the parcel mislabeled or the baggage check misdirected, or if the shipment had gone astray and had to be traced. But such was not the case. If everyone in McAllen had sat still and gone about his business, the shipment would have moved uneventfully to Kentucky in the total absence of the message. And if the telegrapher had been on duty and had failed to send such a message, it does not appear that any rule of the Carrier or any established or customary requirement would have been violated.

The most that appears is that a clerk in McAllen, Texas experienced a wave of solicitude, indulged in a ceremonious but unnecessary telephone call and perpetuated his anxiety in a writing.

It may be that the transmission of a message such as this, unnecessary though it may have been from an operating standpoint, promoted good public relations and so was in the Carrier's interest. But this consideration is also a matter of legitimate interest to all employees and is not the peculiar concern of any one craft.

In view of the foregoing considerations we are unable to conclude that the transmission or the receipt of this message was the exclusive work of telegraphers. We reach this conclusion independently of Awards 5181 and 5182.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of February, 1952.