

Award No. 6419

Docket No. TE-6450

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Emmett Ferguson, 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, that

(1) The Carrier violated the terms of the current agreement between the parties when, on December 6 and 27, 1950, and January 8, 1951, at Williamsburg, Virginia, it required or permitted an employe not coming within the scope of said agreement to perform by means of the telephone in lieu of telegraph, communication service which is reserved to employes of the classes enumerated in the agreement; and

(2) The Carrier shall now by appropriate award and order be required to compensate the occupant of the agent-operator position at Williamsburg a "call" as provided under the provisions of Rule 27(b) for work denied on each of the above dates.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing effective date of September 1, 1949 as to rules and February 1, 1951 as to rates of pay (Reprinted April 1951) is in effect between the parties, hereinafter referred to as the Telegraphers' Agreement.

Williamsburg, Virginia, is a station located on the Richmond Division, approximately 49 miles east of Richmond, Virginia. The position classified as Agent-operator is the only position coming under the Telegraphers' Agreement at this station. The regularly assigned hours of the agent-operator position are 8:30 A. M. to 5:30 P. M. with one hour out for meal. The position is one on which service is necessary seven days a week. There is also a position of Clerk maintained at this station not covered by the agreement. The hours of service of the Clerk's position being arranged so that the occupant thereof is on duty when trains Nos. 43 and 48 are scheduled to arrive and depart. No. 43 is due at Williamsburg at 8:52 P. M. and No. 48 is due at 8:10 P. M.

On December 6 and 27, 1950, as well as January 8, 1951, the Carrier required or permitted the clerk to perform communications service of record by the use of the telephone at Williamsburg, at a time that the agent-operator was not on duty. The Organization claimed that under craft lines that the work of performing communications service of record, such as that

in which event the employe at such station shall be notified and paid a call." (Underscoring supplied)

The carrier steadfastly declined to become a party to such rule, because of the far reaching effect the adoption of such rule would have had. Attention is called to the fact that the employes were asking that their scope rule embrace transmittal or receipt by telephone of messages, train line-ups, reports of record **OR OTHER INFORMATION** at stations where an employe covered by the telegraphers' agreement is employed. Adoption of such a rule would have meant that no one but a telegrapher could use the telephone.

Request for such change in the scope rule showed that the employes did not understand that the scope rule as it then existed gave them exclusive right to telephoning. In line with this, the claim in this case can be nothing but a request that your Board write a rule drawing such telephone use under the scope rule of the telegraphers' agreement. It is well known that it is not the function of your Board to write new rules, the Board's function being restricted to interpreting and passing on application of rules as they have been negotiated between the parties in conference carried out in the manner prescribed by the Railway Labor Act, as Amended.

There has been no violation of the telegraphers' agreement in this case, and the claim should be denied.

All data submitted have been discussed in conference or by correspondence between the parties in the handling on the property.

(Exhibits not reproduced)

OPINION OF BOARD: The question here present, is whether or not the scope rule has been violated in the instances claimed, when written information relative to flat wheels, baggage, and number of passengers, was sent by telephone by a clerk, at a station where telegraphers are regularly employed.

The scope rule defines the character of work to be performed. The transmitting or receiving of messages, orders or reports of record, by telephone in lieu of telegraph, has been determined many times by this Division, to be work within the telegraphers' scope rule, and belongs to them exclusively.

Considering then, that the present communications were written out, and were handled through the intervention of a third party, concerned matters that needed to be communicated instantly, were again written out upon receipt, that a record thereof was maintained and that they related to the Carrier's business of transportation of persons and property, we are of the opinion that they were messages that would necessarily have been handled by telegraph before the advent of the telephone. Because the information in the messages related to passenger load, train condition, and property being transported, which was needed to be communicated immediately, and a record thereof maintained, we cannot say that they were only informative, personal, or unnecessary.

We believe these determinations to be the proper criteria to apply and we distinguish this award from the line-up cases cited between the present parties on this property.

Especial note is taken of the organization's disclaimer of all telephone work as such, both in the submission and in argument. Thus we add, that this award is based not primarily on the use of the telephone as such; but rather on the character of the use to which the phone was put.

We conclude that the scope rule was violated in the instances claimed and that the agent-operator at Williamsburg is entitled to pay for a call Dec. 6, and Dec. 27, 1950 and Jan. 8, 1951 as claimed.

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 Employees involved in this dispute are respectively carrier and employees 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 scope rule was violated in the instances claimed and that the agent-operator at Williamsburg is entitled to pay for a call December 6, and December 27, 1950 and January 8, 1951 as claimed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of November, 1953.

DISSENT TO AWARD 6419, DOCKET TE-6450

This Award is in error in holding that messages telephoned to the Stationmaster at Richmond, relating to number of passengers for train connections at Richmond, are a matter of record. They are current information only, and after the train referred to therein reaches Richmond, there no longer is any necessity for retaining this information inasmuch as train connections are not guaranteed.

Furthermore, the record shows conclusively that employees other than telegraphers have been telephoning this information in this manner in excess of 25 years.

The Award also holds that these messages were sent by telephone at a station where telegraphers are regularly employed. There has been but one such employee at this station for at least 25 years, i.e., the Agent-Telegrapher.

The undersigned hold that the telephoning of messages relating to passengers for train connections, which connections are not guaranteed in the transportation sold, is not work which is exclusively reserved to telegraphers.

For the above reasons we dissent.

/s/ C. P. Dugan

/s/ W. H. Castle

/s/ R. M. Butler

/s/ J. E. Kemp

/s/ E. T. Horsley