

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**MISSOURI PACIFIC RAILROAD COMPANY
GUY A. THOMPSON, Trustee**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad that:

(1) The Carrier violated the terms of the Agreement when it required or permitted a section foreman, an employee not covered by this agreement, to copy and handle a lineup by telephone at Cherry Valley, Arkansas, a location where an employee covered by the scope of the Agreement is assigned but not on duty at the time the violation occurred; and

(2) That Agent-Telegrapher A. G. Seaton, Cherry Valley, Arkansas, shall be compensated for a call on October 30, 1951, in accordance with the provisions of Rule 10-(c) of the applicable agreement.

EMPLOYEES' STATEMENT OF FACTS: A. G. Seaton is agent-telegrapher at Cherry Valley, Arkansas, with assigned hours 8:00 A.M. to 5:00 P.M. with one hour off for meal.

On October 30, 1951, the Section Foreman at Cherry Valley came in on the dispatching telephone at 7:12 A.M. and asked the dispatcher for a lineup. The dispatcher called Paragould, Arkansas and gave the operator at that point a lineup addressed to the Section Foreman at Cherry Valley as follows:

"Wynne 7:12 A.M. Oct. 30, 1951.

No. 370 Eng 525 leave Wynne 8:18 A.M.

No. 392 on time

No. 363 by Harrisburg 6:36 A.M.

No. 361 by Nettleton 6:41 A.M.

No. 369 on time"

and instructed the telegrapher at Paragould to relay the lineup to the Section Foreman at Cherry Valley, 49 miles distant.

Because of this by-passing of the agent-telegrapher at Cherry Valley, claim was filed in his behalf for a "call." Carrier denied the claim.

OPINION OF BOARD: This claim is made by a Telegrapher for a call based on the Scope Rule (1-(a)(b)) and the Call Rule (10-(c)) of the Agreement.

At a time when Claimant was not on duty, a Section Foreman received and copied line-ups over the telephone, not directly from a Dispatcher, but from a Telegrapher on duty at an adjacent open station in the same seniority district.

First. This Scope Rule merely enumerates positions and, except for train orders, does not describe the work covered. But the class of positions set forth covers communication service; and, notwithstanding the advent of the telephone, the reception of line-ups is well-recognized as Telegraphers' work.

When an outsider secures a line-up by direct communication with a Dispatcher, to the exclusion of an available Telegrapher, an overwhelming consensus of awards finds a violation of scope rules such as this one (Awards 604, 941, 1261, 1268, 1281, 1282, 1284, 1303, 1552, 1671, 1720, 1721, 1722, 1752, 1791, 1983, 2934, 3116, 3881, 4009, 4018, 4923, 4925, 4967, 5133, 5407, 5408, 5409, 5639 and 5765; contra 603 and 4791). Thus, we start with the general conclusion that this Scope Rule was intended to cover the reception of line-ups.

The precise issue here, however, is whether the Scope Rule is satisfied by the use of a Telegrapher at an adjacent open station in the same seniority district when the Telegrapher was not on duty at the point where the line-up was needed.

Second. There is some evidence of practice in this record and also in TE-6463 (Award 6608). We have considered the two records together.

There are 17 divisions or seniority districts covered by this Agreement. The evidence of practice relates to three divisions only.

On the Memphis Division, there is no evidence of what the general practice, if any, has been; but there is evidence in this record that the Section Foreman at Cherry Valley has for many years been copying line-ups received over the telephone from a Telegrapher at an adjacent open station when no Telegrapher was on duty at Cherry Valley.

On the Missouri Division there is evidence in TE-6463 (Award 6608) from the Division Trainmaster and the Division Engineer of a like practice generally on the Missouri Division "for (the) past several years" with respect to Maintenance of Way employees.

On the other hand, there is some evidence of a contrary practice and the payment of one or more claims such as this on the Northern Kansas Division.

It is thus apparent that practices exist, but whether there is a consistent established practice over the entire system of the Carrier does not appear from the records in these two cases.

Third. Established practice under an agreement may be a useful guide to what the intention of the parties was, when the agreement is indefinite, uncertain or ambiguous.

In the absence of any evidence of practice, resort must be had to other means of resolving indefiniteness or uncertainty in a provision of an agreement such as a scope rule like this one (Award 4516).

Since actions speak louder than words, the manner in which the parties themselves have translated an indefinite, uncertain or ambiguous term of an agreement into performance is very strong evidence of what their intentions

were as to its exact meaning. Thus, evidence of practice may have controlling effect if the practice is consistent and well established.

Single isolated instances of practice are of little assistance unless actual acquiescence in them by the parties to the agreement is shown. On the other hand, when the practice is widespread and well established, the only reasonable inference is that both parties have acquiesced in it.

Evidence of inconsistent practices is of no assistance whatsoever. This Agreement is system-wide. It was, therefore, obviously not intended to have one meaning on one division of the Carrier and a contrary meaning on another division (Awards 5639 and 6588).

Fourth. In view of the foregoing considerations, we hesitate to construe this Scope Rule, which covers the entire system, upon the basis of the fragmentary and inconsistent evidence of practice before us. The claim should therefore be remanded to the property for further handling and return here if the parties are unable to agree.

If a substantially consistent and well established practice is found to exist generally on the System, the claim should be disposed of in accordance with the practice. Otherwise, the claim should be sustained for the reasons stated in Award 4516.

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

The claim should be remanded to the property for further handling in accordance with the foregoing Opinion.

AWARD

Claim remanded to the property for disposition in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.