

Award No. 6778
Docket No. TE-6036

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Buffalo and East)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East, that

(a) The Carrier violated and continues to violate the provisions of the agreement between the parties, when it requires or permits employees holding no rights under the scope of said agreement at the Stationmaster's Office, Syracuse, New York to copy lineups and perform "OS" work by telephone; and

(b) If the Carrier elects to continue the performance of this communications work of record at Syracuse Stationmaster's Office, it shall be performed by and be assigned to employees coming under the agreement in accordance with the rules of said agreement; and

(c) For November 11, 1950; January 8; February 19, 1951 and for each day commencing February 19, 1951 and continuing until the violations are corrected, the Carrier shall be required to pay to the senior idle employee under the agreement, on the seniority district, an amount equal to eight hours' pay at the established rate for such work.

EMPLOYEES' STATEMENT OF FACTS: An agreement dated July 1, 1948 as to seniority wages and working conditions, as revised September 1, 1949, is in effect between the parties, hereinafter referred to as the Telegraphers' Agreement.

The stationmaster's office concerned in this claim, is located on the third floor, Room 315, in the passenger station at Syracuse, New York. Syracuse is also the division headquarters where the operating officials are located. This requires constant flow of communications in connection with the movement of the great number of trains moving in and out of this station and on the division.

There are two telegraph offices located in Syracuse passenger station, both on the same floor of the station building, and are adjacent to the stationmaster's office.

It should be understood that when the clerks, Station Master or Assistant Station Masters converse by telephone with the train dispatchers' office they may talk with the Chief Train Dispatcher who is not subject to any agreement, with one of the train dispatchers under the scope of agreement with the American Train Dispatchers Association, or with one of the telegrapher-clerks employed in the train dispatchers' office under the scope of the Telegraphers' Agreement, and these conversations may be conducted over the train dispatchers' telephone, the message telephone or the commercial telephone.

While the right of the Carrier to require or permit conversations over its telephone lines has been recognized by telegraph service employees as well as other classes of employees for a period of more than 40 years, the Telegraphers' Organization is now requesting your Board to restrict the rights of the Carrier as well as employees under the scope rule of other agreements in this respect.

CONCLUSION

In the final analysis, the question involved in this dispute is definitely answered in Award No. 700 in the following language:

"The use of company telephone lines by or between Division Officers, Chief Clerk to General Manager, Chief Dispatcher, Train Dispatchers and Assistant Yardmasters, or other employees, in connection with matters under their jurisdiction, is also no different from the recognized practice in effect on this and other railroads."

"As shown by the record in this case, there is no rule in the Telegraphers' Agreement restricting the right of the Carrier to have employees other than those covered by that Agreement handle messages and reports over the telephone; nor any rule prohibiting telephone conversations by and between officers, dispatchers, assistant yardmasters, and/or other employees; nor prohibition of train and yard men obtaining permission from a telegrapher by telephone to use a designated track, or report when clear of same. See Awards 652 and 653."

For the reasons herein set forth, the Carrier respectfully requests the Third Division to deny the claim of the Employees.

No facts or arguments have been herein presented that have not been made known to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends that the within dispute at Syracuse is similar to that at Rochester which was the subject of our Award 4882. There, the stationmaster worked directly with the dispatcher over the train dispatcher's telephone. Similarly here. However, in that case the named employees were located in cities seventy miles apart. Here, the stationmaster and dispatcher were located in the same city, on the same floor of the same building. The occasion for the method of handling in Award 4882 was a derailment which blocked certain track, necessitating all westbound trains to move over a certain track against traffic. The Rochester trainmaster's office was set up as the communications office to handle train movements by orders, messages of record and "OS" work for a matter of hours.

In the instant case, Carrier contends that the telephone was resorted to merely for the purpose of giving the stationmaster information concerning

arrival of trains so that he could efficiently handle his work; that the telephone was used in lieu of messenger and that the practice had existed for over forty years.

The Organization contends that the dispute is not that simple; that the telephone conversations are definitely of record; that the stationmaster's office performs communications service of record with at least one-half dozen offices in cities outside of Syracuse, but Carrier answers that this information was obtained by telegraph employes in each instance. The Organization submits into evidence transcripts of conversations which it states were taken at random on certain dates and which are typical of the alleged daily violations.

The Carrier concedes that pencil notations of the information exchanged between dispatcher and stationmaster may have been made in aid of memory but no need for permanent record existed and the penciled notations were soon discarded.

From what we have set forth above, it would seem clear that the within case bears no relevant similarity to that arising at Rochester, subject of Award 4882. In one (Rochester) the communications controlled train movements; at Syracuse, they had no such effect but were merely informative and incidental to the stationmaster's work of better arranging for reception of trains at his station. While such oral information was reduced to writing in aid of memory, it could have been so written in the first instance and transmitted by messenger without offense, so the argument made is without merit.

Further, from the evidence submitted, it appears that the practice now complained of had existed at Syracuse for over forty years without objection, which fact is persuasive of the parties' intentions, particularly where concerned with a claim which itself must rely upon custom and practice and not clear agreement for support.

While the Employes assert that the telephone was used to obtain train line-ups from a half-dozen cities, no proof of such fact is submitted except that it was shown that the information was available and exchanged between stationmaster and dispatcher. The Carrier emphatically states that such information was obtained through telegraphers and the close proximity of a telegrapher's office is noted in the record. In absence of proof to the contrary by the party asserting the claims, we must accept such an explanation. The case then becomes nothing more than use of telephone in lieu of messenger which, we have several times recognized, does not infringe upon the Telegraphers' Agreement.

The only "OS" work done by the stationmaster was transmitted by messenger.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

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 based upon facts appearing in the submission, we find no violation of the Telegraphers' Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1954.