

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines),

1. That the Carrier violated the rules of the current Agreement between the parties when on March 21, 1952, it required or permitted Mr. G. E. Moss, Assistant Superintendent of Communications; Mr. J. E. Clyde, Communication Traffic Supervisor, both officials of the Carrier not covered by the Agreement, and the Manager of "BD" Office who is not classified as a Wire Chief, to perform the routine duties of a Wire Chief in "BD" General Telegraph Office, San Francisco, Calif.

2. That Mr. R. L. Hiatt, regularly assigned Mechanician Assistant Wire Chief who was available for duty and not used shall be paid the equivalent of eight hours' compensation at the overtime rate for wire chief work denied him March 21, 1952, in the "BD" General Telegraph Office, San Francisco, Calif.

EMPLOYES' STATEMENT OF FACTS: There is now, and was at all times since the first date, hereinafter mentioned, in full force and effect, a collective bargaining agreement between the parties, hereinafter referred to as the Telegraphers' Agreement. The Agreement bears the date of December 1, 1944 (reprinted March 1, 1951) including revisions. Copies of this agreement and amendments are on file with this Board and are, by reference, included in this submission the same as though set out herein word for word.

The dispute involves interpretation of the agreement and was handled on the property as prescribed by the Railway Labor Act, as amended, and in accordance with the usual handling of grievances. The claim was denied by the Carrier following a decision of the top ranking official of the Carrier and is now properly submitted to your Board for adjudication.

On March 21, 1952, due to an excessive amount of wire trouble in "BD" General Telegraph Office, San Francisco, additional help was needed in the class of work covered by the classification of Wire Chief as contained in the agreement. The Carrier required or permitted Mr. Moss and Mr. Clyde, who are both officials of the Carrier, and Mr. Shiffer, Manager of "BD" Office, who is not classified as a Wire Chief, to perform the regular assigned routine

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The question here is whether certain activity engaged in by three supervisors was routine wire chief work, or was work properly done in the course of their supervisory duties. Claimant contends that it was routine wire chief work and that under the Agreement rules he should have been called to perform it. The claim is for eight hours' compensation at overtime rate.

There is conflicting evidence in the record as to the nature of the work which was actually done by the supervisors. There are also conflicting contentions as to whether whatever work was done could properly be performed by the supervisors in the course of their supervisory duties or had to be done exclusively by wire chiefs. The evidence of the claimant is to the effect that on March 21, 1952, in "BD" General Telegraph Office, the supervisors adjusted duplex sets, assisted in making tests on board at BD, tested telegraph relays, changed tubes in carriers and performed other unspecified work said to be that of a wire chief. Carrier's evidence is that the supervisors did not adjust duplex sets, but explained and illustrated adjustment techniques; that they did not make wire tests but made listening tests to determine whether or not lease or loaner facilities were needed; that they made no tests on relay performance, but changed two tubes to illustrate new tube changing technique; and that all of this work was of a supervisory nature. The burden is on the claimant to prove that the Agreement was violated. The question here is whether, in the face of the conflicting evidence, it can be found that the burden has been met. Claimant contends that its evidence is more worthy of belief because it is contained in letters from wire chiefs written immediately after the incidents took place, and because a statement in its submission that there was an excessive amount of wire trouble in "BD" Office on the day in question was not denied or refuted by the Carrier. Claimant argues that it is the wire chief's function to detect and prevent or correct wire trouble; that where there is an excessive amount of wire trouble there is excessive need for the services of wire chiefs; and that therefore it should be inferred that the work done by the supervisors was work which should have and would have been done by the wire chief had there not been too much of it for one man to handle.

We think that there is nothing to choose between the probative value of the evidence submitted by Carrier and that submitted by Claimant, and that neither is entitled to greater weight. Nor do we agree that the fact of "excessive wire trouble" tips the balance in Claimant's favor. While the inference contended for by Claimant is a possible inference from the fact of excessive wire trouble on the day in question, it is by no means the only possible inference. It can also be argued that part of the supervisors' duties is to see that wire trouble is prevented and corrected; and it may be inferred that excessive wire trouble calls for extra supervision in the form of extra checks, tests and instruction, rather than an extra wire chief assignment. There is no indication as to how much time was spent by the supervisors in the activities complained of; nor is there any similar objective evidence which might shed light on the true nature of the supervisors' activities on the day in question.

Claimant contends that even if the supervisors did what Carrier says they did, this was still wire chief work—particularly the work in connection with securing loaner facilities. Here again there is a dispute with no objective means of resolving it. There is no rule defining wire chief work. Carrier states that the supervisors have always done the work which is now protested as part of their supervisory duties. The line between supervision and usurpation of wire chief work is a thin one and there is not sufficient evidence here to support a finding that this work could not have been done in the normal course of supervision.

On the record herein, we can only hold that the claimant has failed to sustain the burden of proving a violation and that therefore the claim should be denied.

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

That the parties 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 for the reasons set out in the Opinion the facts disclosed by the record do not warrant an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of November, 1955.