

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

NORTHERN PACIFIC RAILWAY COMPANY

THE ORDER OF RAILROAD TELEGRAPHERS

STATEMENT OF CLAIM: Claim of C. H. Young, agent-telegrapher, Arlee, Montana, for payment of eight hours at time and one-half rate on Saturday, June 6, 1953, account Track Supervisor Richard Lechner securing a lineup of trains at Flathead, Montana, direct from the train dispatcher.

CARRIER'S STATEMENT OF FACTS: C. H. Young is assigned as agent-telegrapher at Arlee, Montana, working from 8:00 A. M. to 5:00 P. M. Monday through Friday, with Saturday and Sunday as rest days. The position of agent-telegrapher at Arlee, Montana is not filled on Saturdays and Sundays.

Richard Lechner is assigned to a position of track supervisor between Missoula, Montana, and Paradise, Montana, working from Monday through Saturday, with Sunday as rest day. Mr. Lechner in filling his assignment travels by motor car from Missoula to Paradise on alternate days of the week and returns from Paradise to Missoula every other day of the week. Mr. Lechner in filling his assignment travels from Missoula to Paradise on Monday, Wednesday and Friday and returns from Paradise to Missoula on Tuesday, Thursday and Saturday. The following sketch shows the territory assigned to Mr. Lechner:

° Paradise	° Knowles	° Perma	° McDonald	° Anconoy	° Ravalli	° Flathead	° Arlee	° Schley	° Evaro	° Rogers	° DeSmet	° Missoula
------------	-----------	---------	------------	-----------	-----------	------------	---------	----------	---------	----------	----------	------------

As the commencement of each work day, Mr. Lechner secures a train lineup from the telegrapher at either Missoula or Paradise, as the case may be.

On Saturday, June 6, 1953 Mr. Lechner while at Flathead, Montana, a blind siding, en route from Paradise to Missoula called the train dispatcher by telephone and secured information in connection with the movement of

nally Form 9024 was designed to show that it was copied by an operator, but later revisions of it have removed the "Opr" title in a subtle effort to obliterate this evidence of the operators' (telegraphers') established jurisdiction over this work. The bare fact is, however, that such work has been pirated from the telegraphers through the instrumentality of the "emergency" telephones which the Carrier has sworn, by everything holy, were to be used for emergency purposes only.

The evidence in this case is that the Carrier has, by its instructions through Roadmaster McLaughlin's letter of June 1, 1953, converted the emergency stations at Flathead, Knowles, McDonald, Schley and Evaro into regular communicating offices for the express purpose of removing established work from the Telegraphers' Agreement and the employes of the Rocky Mountain Division District. Your Board has held in many decisions that work of a class covered by the Agreement belongs to the employes upon whose behalf it was made and cannot be delegated to others without violating the agreement. The record in this case is quite plain that the line-ups in question represent work which accrued to the claimant, which he had performed time after time; that the emergency telephones were resorted to as a medium to divert such work from the claimant in total absence of any emergency; and that the communications handled were those of record and therefore subject to the Scope rule of the Telegraphers' Agreement. The Carrier should have bulletined telegraphers' positions at the points enumerated pursuant to the Agreement or allowed these claims on the occasions an employe not covered by the Agreement was required to perform such work. A sustaining award is fully merited and the Employees request such an award.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is regularly assigned as Agent-Telegrapher at Arlee, Montana, a one man station. His claim "for payment of eight hours at time and one-half rate on Saturday, June 6, 1953, account Track Supervisor Richard Lechner securing a line-up of trains at Flathead, Montana, direct from the Train Dispatcher", is before the Board for decision on the ex parte submission of Carrier and the Employees' response.

There is in evidence a contract by and between the parties to this dispute effective April 1, 1948, as revised. The Track Supervisor is not covered, but works under an Agreement which the Carrier has with the Brotherhood of Maintenance of Way Employees. He operates a track motor car in his travels over the lines of the Carrier to perform his duties.

Saturday and Sunday are claimant's assigned rest days, but prior to March 1, 1953 he was assigned regularly to work 12:20 P.M. to 2:20 P.M. on Saturdays, and, while so assigned, secured line-ups for the Track Supervisor on his regular trips over the portion of the railroad where Arlee is located.

After claimant's Saturday assignment was discontinued, the Track Supervisor continued to make his customary trips on Saturday and continued to need a line-up, on most of the days, which he obtained at Arlee from the Train Dispatcher by telephone. On Saturday, June 6, 1953 while en route Paradise to Missoula, at Flathead (a blind siding), as instructed, he secured information from the dispatcher in connection with the movement of trains. Flathead is located 5.3 miles west of Arlee.

It appears attempt is made in this docket to resolve a controversial question, by creating a situation for securing information from the dispatcher concerning movement of trains at a place where no telegrapher was employed. We find in the record a directive to Track Supervisors to use the

telephone at stations where no telegrapher was employed, the reason given being that:

“We will be in a better position to deny call claims from telegraphers at stations where Saturday service is not assigned.”

The Employes have submitted another claim, Award No. 7345, which serves to bring the entire controversy to our attention.

Despite Carrier's contention to the contrary, we find and hold here that the information furnished the Track Supervisor by the dispatcher constituted a line-up and that line-ups are communications of record on the property in question. Neither does it serve any purpose that Carrier argues there is an absence of proof as to whether the Track Supervisor reduced the information to writing or made a mental note concerning same. This Carrier's own rules definitely establish the fact that track motor car operators are to be covered on train movements by line-ups which are to be reduced to writing on a standard form required by Carrier.

Carrier's Exhibits A to X impress us as being mostly self-serving and of little probative value. The controversy that has existed and which still exists over the class of work here in dispute convinces us, without aid of exhibits, that line-ups are obtained by Track Supervisors from Telegraphers when they can and from the dispatcher when it proves more handy to do so. But, is it a violation of contract to do so? That, is the question and it is not one of recent origin on this property.

We find from Carrier's Exhibit “Z” in the record that as early as 1937, at least, the Telegrapher craft had staked out a claim to the class of work in question. It has been observed that the dispute there concerned others as well, and, that the Maintenance of Way Employes were not parties, but the Telegraphers make it clear, as a party to the dispute, that “they object to their work (copy train orders and to call dispatchers on telephone in connection with train movements) being performed by employes not in the telegraph service”.

The Carrier must have seen some merit to the claim. A settlement was made, and, effective August 1, 1941, restrictions were imposed so far as train and enginemen are concerned. We do not say that settlement is binding on Carrier in this dispute, but the implications cannot be ignored.

Telegraphers, as the result of the August 1, 1941, settlement are on record as to what exceptions they will recognize where others perform the class of work here in dispute, but those exceptions do not extend to this docket. No other rule that would serve that purpose or support Carrier's claim of practice has been called to our attention. We are not disposed to add another exception, on the showing made in this docket, that at times, others have obtained information about train movements over the telephone.

Being of the opinion, as heretofore expressed, that the subject matter of this dispute concerns a message of record, it should have been obtained, as in the past, by the Track Supervisor from the Agent-Telegrapher who here makes claim.

The measure of compensation is that provided in Rule 75 of the Agreement of April 1, 1948. See Award No. 7345.

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 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 the Agreement was violated.

AWARD

Claim modified in accordance with the above Opinion and Findings and as modified is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June, 1956.