

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MAINE CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Maine Central Railroad, that:

1. Carrier violated and continues to violate Article 1 of the agreement between the parties when it causes, requires or permits employes not covered by the Telegraphers' Agreement to handle train line-ups at Winthrop and Gardiner.

2. Carrier shall be required to compensate Agent-telegrapher at Winthrop and Gardiner, in accordance with the Call and Overtime rules of the Agreement for each and every day, commencing sixty days prior to May 21, 1954, such work was performed by employes not covered by the agreement.

3. The dates of such violations, the names of employes entitled to compensation and the amount due each employe shall be determined by joint check of Carrier's records.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement between the Maine Central Railroad Company, hereinafter referred to as Company or Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers, governing rates of pay, rules and working conditions for employes covered thereby. The agreement was effective January 1, 1951, and is by reference, made a part hereof as though copied herein word for word.

The dispute submitted herein involves interpretation of the foregoing agreement; was handled on the property in the usual manner to the highest officer designated by carrier, in accordance with the provisions of the Railway Labor Act, as amended. Carrier's highest officer declined the claim and the dispute remains unadjusted. This Board has jurisdiction of the parties and subject matter, as provided in Railway Labor Act, as amended.

The dispute concerns Carrier's diversion of work, covered by the scope rule of the agreement to an employe not covered thereby. The facts are:

At Winthrop, Maine, carrier maintains a station which is in charge of C. A. Poor, Agent-telegrapher. It is a telegraph (telephone) station with the office call letter of "NO". The assigned hours of the Agent-telegrapher at the

by the motor-car operators for their own use from telegraph operators employed under the prevailing schedule of rules. In other words, the work of receiving the line-ups from train dispatchers, as well as the work of transmitting them to the motor-car operators, was performed by employees subject to the agreement. In essence, then, it is the contention of the employees that delivery of the line-ups to the motor-car operators may not properly be made by telephone communication between the motor-car operators and telegraph operators located at points other than those where the motor-car operators are stationed. This contention, which, if upheld, might necessitate the assignment of telegraph operators at all points where line-ups are found to be necessary, is urged by the employees despite the provisions of Rule 58 of the Agreement and the long-established practice of the carrier in this connection.

"Rule 58, captioned **TELEPHONES**, which displaced an earlier rule captioned **USING TELEPHONE**, imposes in this regard express restrictions, explicitly stated, upon the carrier, but these restrictions are specifically made applicable only to the handling of train orders. No persuasive consideration has been presented for assuming, as contended by the employees, that this rule with regard to train orders was designed to restrict the rights of the employees, as established by the scope rule, rather than those of the carrier, by way of express definition of the scope rule in controversial situations, and that therefore the scope rule not only applies to such handling of line-ups as is here involved but is more comprehensive in its restrictions upon the carrier in connection with line-ups than it is in connection with train orders.

"In addition, it must be noted as of substantial significance that while the current Agreement dates from 1927, the present form of line-up from 1931, and the precise method of handling here involved at least from 1934, this is the first claim submitted by the employees questioning the propriety of the established practice. Although it must be conceded that the long-continued acquiescence of the employees cannot operate to alter the scope rule of the Agreement, such acquiescence is clearly relevant to a determination of the intent of the parties as to the applicability of the scope rule to the situation here in dispute.

"It must be concluded, therefore, that under the circumstances of this case—including the character and development of the relevant rules and the established practice of the carrier in the handling of line-ups—there has been no violation of the Agreement."

The "Opinion of Board" in Award No. 1145 has been upheld in practically all subsequent identical cases (of which the instant case is one) thru the years.

For the reasons cited in its Position, the Carrier respectfully requests that the instant claim now before your Board be **DENIED**.

(Exhibits not reproduced.)

OPINION OF BOARD: Here the section foreman at Winthrop, Maine, obtained line-ups by telephone from the telegrapher at Leeds Junction (about 9 miles distant) prior to the time when the telegrapher at Winthrop came on duty in the morning. Similarly, a section foreman and a signal maintainer at Gardiner, Maine, obtained line-ups by telephone from a telegrapher at Augusta (about 6.4 miles distant) prior to the time when the telegrapher at Gardiner came on duty in the morning. Thus the issue herein is whether the Telegrapher Agreement (the January 1, 1951, Agreement applies in this case) was violated when persons not covered by said Agreement received line-ups, at stations where a telegrapher was assigned but not on duty, from a telegrapher at adjacent stations.

As is true in regard to numerous other issues that have been considered by this Board, the Board's precedents evidence a diversity of results and an even wider diversity of Referee tongues on the same general issue stated hereinabove. None of the Board's decisions on this issue involve this Carrier, however, and the present Referee accordingly is free to follow any precedent or line of precedents that appears correct to him.

Under scope rules of the general character involved herein certain awards of this Board have placed special emphasis, in deciding cases involving the same issue that is before us, upon past practice on the particular property leading up to the time when the effective Agreement was entered into. Recent Award 6788 utilizes this approach and the reasoning of that award is persuasive upon the present Referee. Other awards which place special emphasis on the past practice element in deciding this same issue include Awards 1145, 5582, 6032, and 6607. Also see Awards 4265 and 4506.

A great deal of the discussion in the present case has concerned the matter of past practice. The Carrier has submitted concrete evidence that past practice on this property for about fifteen years (and possibly longer) prior to the present claim has permitted the obtaining of line-ups in the manner and under the circumstances involved herein. The Organization has submitted no evidence to refute the Carrier's evidence of such practice. It must be concluded that the evidence of record establishes the Carrier's contention regarding past practice.

All of the above considered, the claim will be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June, 1957.