

Award No. 8130
Docket No. TE-7281

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORTHWESTERN PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the rules of the agreement when on July 24 and August 6, 1953, it required or permitted a trainmaster, an employe having no rights under the agreement to perform telegraph (telephone) service at Eureka, California and,

(2) As a result of this violative action, the Carrier shall by appropriate order be required to compensate R. P. DeVoe one "call" of 2 hours at time and one-half rate on each of the dates mentioned in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of August 1, 1945 as to rates of pay (reprinted September 1, 1951, including revisions) hereinafter referred to as the Telegraphers' Agreement, is in effect between the parties. Copies thereof are on file with the National Railroad Adjustment Board.

In the revised Wage Schedule of the Agreement, Basic rates of pay, effective February 1, 1951, the following positions are listed:

Eureka..... *Agent

Telegrapher-Car Distributor
1st Telegrapher-Clerk
2nd Telegrapher-Clerk
3rd Telegrapher-Clerk

Assigned hours of Agent (Not required to Telegraph) are 7:00 A. M. to 4:00 P. M., Monday through Friday. Telegrapher-Car Distributor, 7:00 A. M. to 4:00 P. M., Monday through Friday, rest days Saturday and Sunday. First Telegrapher-Clerk, 7:59 A. M. to 3:59 P. M., Monday through Friday, rest days Saturday and Sunday. Second Telegrapher-Clerk, 3:59 P. M. to 11:59 P. M., Wednesday through Sunday, rest days Monday and Tuesday. Third Telegrapher-Clerk, 11:59 P. M. to 7:59 A. M., Friday through Tuesday, rest days Wednesday (works rest day Thursday). Swing position No. 12, 7:59 A. M. to 3:59 P. M., Saturday and Sunday; 3:59 P. M. to 11:59 P. M.,

Rule 14 deals with seniority of employes coming within the scope of the agreement.

It is obvious that none of the rules cited by petitioner's local chairman provide any basis for the claim here presented. As a matter of fact, in presenting this case to the Board, the petitioner is endeavoring to unnecessarily enlarge upon the work of employes covered by the Telegraphers' Agreement in the absence of any provision in the agreement supporting its position, and contrary to practice both generally and at the particular point here involved throughout the life of current and prior agreements.

In this connection, the use of the telephone by the trainmaster on the dates here involved is no innovation. As a matter of fact, officers and supervisors of the carrier have been using the telephone in giving and relaying instructions to the employes for many, many, years. That practice was in effect on January 1, 1915, when the first agreement covering telegraphers on this property was negotiated and executed. The Telegraphers' Agreement has been revised and/or reprinted with revisions on at least six occasions since 1915, and at no time prior to the instant claim was any exception taken to the practice in effect. Obviously if any change were desired by the petitioner, the matter was one which should have been handled through the medium of negotiations. The fact that no rule of the agreement supports the claim now made and the further fact that the practice has been in effect for approximately 40 years during the existence of an agreement, most certainly evidences petitioner's acquiescence in that practice.

CONCLUSION

In view of what has been shown supra, carrier asserts it is obvious that the claim in this docket is entirely lacking in neither merit or agreement support, and therefore requests that said claim be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The confronting claim is made in behalf of a relief employe, or H. P. DeVoe, for a "call" on each of two dates, that is, July 24, 1953, and August 6, 1953, account of Carrier's alleged failure to call him on the dates in question to perform duty in connection with the handling of certain communications, which it is asserted were "communications of record".

The Organization took the position that the work here involved was, and is clearly reserved to the telegrapher craft under the Scope Rule of the effective agreement inasmuch as the communications were "of record." It was pointed out that telegraphers were on duty at both stations involved, and that the transmission of the said communications could not properly be transmitted by one not covered by the said agreement.

The Respondent counters that the Telegraphers' Organization is here taking the position that the use of the telephone is, in effect, reserved to them (telegraphers), which proposition is obviously unsound. It was further asserted that the Trainmaster was, at the time in question, merely using the telephone to give instructions to a conductor and that said instructions were not "communications of record" and as such did not come within the purview of the Scope Rule of the Telegraphers' Agreement.

That the use of the telephone is not restricted to any one craft is well settled. Prior to the general use of the telephone communications were generally transmitted by Morse Code. Since that time, a fine, but none the less clear line of distinction has been drawn between the types of com-

munications which are, and are not generally considered the type, transmittal of which is covered by the Scope Rule of the effective agreement.

We stated in Award 4280:

“* * * The rule generally employed in describing telephone work reserved to telegraphers is that the use of a telephone to transmit or receive messages, orders or reports of record belong exclusively to telegraphers. * * *”

Copies of the confronting communications were made by the telegrapher at Sand Fork. Copies of these communications are contained in this record. There is also evidence that the telegrapher at Eureka was too busy to handle said communications and the facts are also present that the Trainmaster required they be transmitted by wire, immediately. Thus we conclude after an examination of the communications in question, that they clearly relate to the control of transportation and as such, are “communications of record.”

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

That the parties waived hearing on this dispute; and

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 Carrier violated the effective agreement.

AWARD

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of November, 1957.

DISSENT TO AWARD NO. 8130, DOCKET NO. TE-7281

This Award is palpably wrong.

The present referee, sitting as the neutral on Special Board of Adjustment No. 117, in denial Award No. 15 involving a similar dispute correctly outlined the basic principle to be observed in determining the outcome of a dispute of this character. There it was stated:

“As to what constitutes a ‘message of record’, Award 5660 stated:

‘While it does appear that the message in question was reduced to writing, it does not appear that there was any requirement that it was to be considered a message or report of record. The mere fact that somebody reduced the substance of a telephone call to writing does not make it a message of record. Nor does it appear that there was any requirement that such a message be sent.’ ”

Other awards of this Division make like Findings.

Here, the evidence of record clearly shows that there existed neither the need nor the requirement that a "record" be kept of certain telephone conversations, and the mere fact that somebody reduced the substance of two telephone calls to writing does not make them messages of record.

We dissent.

/s/ J. E. Kemp

/s/ J. F. Mullen

/s/ R. M. Butler

/s/ W. H. Castle

/s/ C. P. Dugan