

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS¹²

SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the San Diego & Arizona Eastern Railway, that:

1. The Carrier violated and continues to violate the provisions of the agreement between the parties when commencing October 19, 1950 at Campo, California and November 2, 1950 at Jacumba, California, it permitted or required section foremen and other track motor car operators, who are employees not covered by said agreement, to copy train lineups at a time that the agent-telegrapher was not on duty at these stations.

2. The Carrier shall pay the occupant of the agent-telegrapher position at both Campo and Jacumba a call payment as provided in Rule 16 (Call Rule) commencing October 19, 1950 at Campo, and November 2, 1950 at Jacumba, and continuing on each subsequent date and occasion that the violation occurred.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of February 1, 1937 (reprinted August 16, 1951, including revisions) with supplements thereto covering rates of pay and working conditions is in effect between the parties to this dispute.

Campo, California, is a one-man station in charge of an agent-telegrapher. This position is scheduled to work the regularly assigned hours of 9:00 A. M. to 6:00 P. M. with one hour out for lunch, Monday through Friday, inclusive. The station is closed Saturday and Sunday and the occupant of the agent-telegrapher position is subject to "call" service to perform any work arising at this one-man agency at a time outside his regularly assigned tour of duty. Agent-telegrapher McNutt, the claimant at this station, lives close to the station and is available for all call service.

Jacumba, California, is a one-man station in charge of an agent-telegrapher. This position is scheduled to work the hours of 9:00 A. M. to 6:00 P. M. with one hour out for lunch, Monday through Friday, inclusive. The station is closed Saturday and Sunday and the occupant of the agent-telegrapher position is subject to "call" service to perform any work arising at this one-man agency at a time outside his regularly assigned tour of duty.

CONCLUSION

The carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim, if not dismissed, be denied.

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 THE BOARD: The question herein is whether the Telegrapher Agreement was violated when employees not covered by said Agreement copied line-ups at stations where a telegrapher was assigned, but when he was not on duty, from telegraphers at another point. This issue was ruled upon recently by this Division in Award 7970; the present Referee participated with the Division in the rendition of said Award. Award 7970 placed special emphasis on the element of past practice in deciding the issue. In the present case a great deal of the discussion has concerned the matter of past practice, and here, as in Award 7970, past practice on the property governs the disposition of the case.

At the outset it must be emphasized that the practice which is relevant in this case is that of obtaining line-ups **outside** the assigned hours of the telegrapher.

Campo was a one-man station both before and after 1950, with the telegrapher regularly assigned to commence work at 9:00 A. M. Since 1950 Jacumba also has been a one-man station, and the telegrapher there also commences work at 9:00 A. M. Prior to May, 1950, Jacumba was a two or three-man station, with a telegrapher regularly assigned to work commencing at 6:00 A. M. and accordingly being available to handle early morning line-ups. The Organization's evidence showing that line-ups were thus secured from a telegrapher at Jacumba prior to May, 1950, does indicate a practice of using a telegrapher to handle line-ups when one is on his regular tour of duty, but such evidence throws no light upon the question of the practice on this property at times when no telegrapher is on duty. (See Employee Exhibit No. 2, which shows that prior to 1950 Jacumba was a 24-hour office, and that said office handled line-ups "exclusively 7 days a week for the motor car operators between Campo and Jacumba and Jacumba and El Centro".) The Organization has submitted no evidence of any practice of "calling" a telegrapher to handle line-ups at any station at times when the station was not open. On the other hand, the Carrier's evidence strongly supports the conclusion that practice for many years on this property has been as follows: Employees have obtained line-ups by telephone from other stations when either (1) no telegrapher was assigned at their own station, or (2) a telegrapher was assigned but was not on duty. (See Carrier's Exhibits "C", "D", and "E".)

The Carrier asserts that under established practice prior to May, 1950, motor car operators at Campo received their morning line-ups via telephone from the telegrapher at Jacumba. Even the aforementioned Employee Exhibit No. 2 seems to bear this out. The Organization's position in this case would have been greatly strengthened had the Organization submitted affidavits from telegraphers who had served at Campo showing that the practice there had been for the Carrier to "call" the telegrapher so that morning line-ups could be obtained through him; or the Organization might have submitted affidavits showing that employees at Campo had customarily obtained their early morning line-ups from the telegrapher at Campo. The absence of any such evidence leaves the weight of the evidence of Record herein in the Carrier's favor.

The Carrier also receives support from the fact that while the alleged violations commenced in 1950, the Organization took no exception thereto

until 1953. It might be noted, too, that during this interval the Agreement was reprinted (on August 16, 1951) while the practice now complained of was taking place.

In view of the above considerations it must be concluded that the Claim is without merit.

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 Employees involved in this dispute are respectively Carrier and Employees 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 19th day of November, 1957.