

Award No. 9951
Docket No. TE-8455

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway that:

1. The Carrier violated the agreement between the parties when it permitted or required an employe other than covered by the Telegraphers' Agreement to perform communication service at Greenville, North Carolina on Saturday, September 25, 1954 and Saturday, October 9, 1954, in connection with the transmission and receipt of reports of record between Wilson, North Carolina and Greenville, North Carolina; and

2. The Carrier shall be required to compensate Operator-Clerk H. R. Phillips, Greenville, to the extent of a "call"—two hours pay at time and one-half rate—for each violation on the dates specified.

EMPLOYES' STATEMENT OF FACTS: Claimant is the duly assigned operator-clerk at Carrier's Greenville, North Carolina freight station, Monday through Friday, rest days Saturday and Sunday. In such capacity, Mr. Phillips is entitled to perform all of the Carrier's communication work at that station. On Saturday, September 25, 1954, at 10:15 A.M., an employe not covered by the Telegraphers' Agreement was permitted or required to receive and copy at Greenville, by use of the Carrier's telephone, two freight waybill reports (Exhibit "A") which were transmitted from Wilson, North Carolina. On October 9, 1954, at 11:35 A.M., the same employe was permitted or required to copy two more such freight waybill reports (also Exhibit "A") likewise transmitted from Wilson via Carrier's telephone system.

Claimant Phillips filed time claim for a minimum "call" of two hours at time and one-half because of his absolute right to perform all such communication work at Greenville. The authority for a "call" claim flows from Article 4—Call Rule, providing:

"When notified or called to perform work outside of established hours, employes will be paid a minimum allowance of two (2) hours at overtime rate."

Article 7, paragraph (m) also provides, in part, that:

"While it is the intent of this Article that, where practicable, employes will be relieved on their rest days, it is understood that an employe can be required to work on his rest day * * *"

the practices then in effect of conductors and others not covered by the telegraphers' agreement copying train orders and otherwise using the telephone was satisfactory to you and your committee, and would be continued, it being also understood and agreed by all present that the copying of train orders or otherwise using outside telephones and telephones at places where no operator was regularly employed by conductors and others not covered by the telegraphers' agreement did not constitute any violation of the agreement with the Order of Railroad Telegraphers, and that this practice would be continued."

and that letter was subscribed to by the former General Chairman in the following language: "The best I can remember the statements below are correct as to the agreements reached," and he then subscribed to same before a notary public.

Such letter of February 26, 1941 is shown in its full text, in fact, in photostatic copy form, in Docket TE-7504 in carrier's ex-parte re-submission, being designated as Carrier's Exhibit "B," and by reference that exhibit in Docket TE-7504 is hereby made a part of this submission.

Your honorable Board has held in several prior awards — and rightly so — that not all telephonic communication belongs exclusively to telegraphers, and respondent carrier submits that the committee on this property recognized this fact by ratification of the letter of February 26, 1941, supra, by the former general chairman who participated in the conference which is referred to and outlined in that letter, and respondent respectfully submits that the circumstances which formed the basis for assertion of this claim by petitioners is fully covered in such letter-ratification, wherein it is stated — " * * * it was mutually agreed that the practices then in effect of * * * others not covered by the telegraphers' agreement * * * otherwise using the telephone was satisfactory to you and your committee and would be continued."

All of the data contained herein has been discussed with the employe representatives, either in conference or correspondence, and/or is known and available to them.

For the reasons hereinabove set forth respondent carrier submits that the filing of this ex-parte submission by the petitioners is merely an attempt to obtain something by Board award which they are not entitled to under the agreement; that petitioner's representatives have in fact agreed that such work as is made by the basis of this claim is not exclusively their work and that it may be performed by others as evidenced by that portion of the February 26, 1941 letter above quoted. We, therefore, respectfully urge that the claim should be denied.

OPINION OF BOARD: The facts are not in dispute. A Clerk on duty at the Greenville, North Carolina, agency on Saturday, September 25, 1954, and again on Saturday, October 9, 1954, and gave him the necessary information so that the latter could prepare waybills for cars of tobacco which had left Wilson on memo waybills. Claimant Operator Phillips of Greenville claims compensation to the extent of a "call," two hours pay at the time and one-half rate for each day.

Though not raised or mentioned by the Carrier either on the property or before the Board, the Carrier member at the Panel hearing before the Referee contended that the claim is barred by Article 34-c of the parties Supplemental Agreement and Section 2 and 1-(b) of the Chicago Agreement of August 21, 1954, which in substance provide that any appeal on the property must be

taken within sixty days and "the representative of the Company shall be notified in writing within that time of the rejection of his decision" or the "matter will be considered closed."

Carrier member states that on January 11, 1955, an appeal was taken by the General Chairman from the decision of lower officers of the Carrier to the General Superintendent without complying with the rule requiring notice of rejection of the lower officer's decision.

It will not be necessary to review the differences in awards on the subject or the question of whether the point was waived by Carrier. It is enough to say that the difficulty facing the Carrier is that nowhere in the record was there proved that such notice was not given, and any contrary conclusion would be the result of unwarranted assumptions and speculation, in which we are not permitted to indulge. Award 8807-Bailer.

It might be well at this time to refer to the so-called Graham-Kennedy letter, previously offered in a similar case and which this Board then held to be "neither an agreement nor an interpretation of an agreement between the parties" and refused to "consider it." Award 8687-Lynch. We see no reason to change that opinion.

On the merits of the question whether the agreement was violated by the clerk receiving the billing information on the telephone while the Operator was on his rest day, we do not believe that Article VII changed the situation therefore existing. That amendment reads:

" * * * the present rules and practices with respect to the Company's right to assign clerical duties to telegraph employees and to assign communication duties to telegraph employees, shall remain undisturbed."

The Organization asserts the position is covered by the "Scope" rule, and if the work of the position is covered by the agreement and not within any exception either stated or "inherent," then it cannot be performed by anyone outside the coverage of the Agreement. Carrier contends that the "Scope" rule only refers to the position by name and does not describe the work and that it is necessary to resort to custom, past practice and tradition to ascertain the work covered.

The parties have furnished us with numerous Awards on the question, most of which are dissimilar on the facts but do indeed touch upon the principles involved herein. In Award 4516-Carter, it was said:

"The Scope Rule of the Telegraphers Agreement does not purport to specify or describe the work encompassed within it. It sets forth the class of positions to which it is applicable. The traditional and customary work of those positions, generally speaking, constitutes the work falling within the Agreement. * * * It cannot be disputed that the classes specified deal largely with communication service. Historically, communication service on the railroads was carried on largely by telegraph. * * * The advent of the telephone * * * and other progressive methods of communication, has gradually reduced the work of the Morse code operator. This Board has sought to follow the communication work of the Morse Code Operator into the advanced methods of communication and preserve for him the work which traditionally belonged to him.

In the case before us, we are concerned only with the use of the telephone. * * * This situation undoubtedly accounts for the inclusion of "Telephone Operators (except switchboard operators)" in the Scope Rule. But it was readily apparent that the use of the telephone was so general that every use of the telephone was not contemplated or intended as telegraphers' work. It was thereupon determined that **employees whose duties require the transmitting or receiving of messages, orders or reports of record by telephone in lieu of telegraph constitutes the telephone work reserved exclusively to telegraphers.** Award 1983." (Emphasis ours.)

The opinion then discusses "lineups" the subject embraced in the matter then before the Board, and pointed out that they afforded protection in the use of the tracks but they are not train orders; they are safety precautions and "we think they are transportation communications in the sense that they protect a necessary branch of the service from the dangers of another." "They are clearly matters of record * * * In the earlier times there was no method of communications with the dispatcher from outlying points other than by telegraph. Consequently it was work which traditionally belonged to telegraphers and the use of the telephone was in lieu of the telegraph." There is no question however that the use of the telephone as a substitute for a personal trip is in no sense of the word "in lieu of work traditionally performed by a telegrapher." "The reservation of work by telephone includes only that which telegraphers formerly performed by telegraph, and nothing more." See also Awards 5181 and 5182-Boyd, 7976-Elkouri, and 4458-Carter.

It is interesting to examine the facts in the case before us and compare them with the requirements laid down in the awards referred to.

For instance, the messages here were the type that were necessarily sent by telegram in the old days of Morse code. These cars had been loaded in Wilson, some miles away, were made into a train for Greenville before the shippers were able to furnish information as to consignee, destination and route. Therefore it was necessary to send this information to Greenville before the train arrived there. Traditionally that could have been done in no other way than by telegraph because of the distance and the time limit. Under Award 4516 this is clearly telegraph work.

The messages satisfied the requirement mentioned in Award 5182-Boyd in that there was " * * * direction given as to where" and "by what route the cars are to be moved."

There are what might be called "diverison" orders such as referred to (Award 58 of Special Board of Adjustment 117) as "a **message of record** within the meaning of both prior awards of the Third Division of the National Railroad Adjustment Board and Award 14 of Special Board of Adjustment 117." The Special Board there concluded that a message sent was a tracer (and not the diversion order which was previously sent) because the verbiage " * * * indicates that the office at Nevada had previously been given advice concerning the diversion of a car **whose number and attached walbill had therein been contained.**"

What seems to be a possibly contrary holding was made by Special Board of Adjustment 136, case No. 7, involving the billing of four cars of old rail but there it was emphasized that **billing** is "clerical work as well as Agent's work" and that "it had nothing to do with train operation or movement." There is not enough information to accurately assess the import of the decision.

In view of all the circumstances it is our conclusion that the work belonged to the telegraphers and the claimant should recover.

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 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 Agreement was violated.

AWARD: Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May 1961.

DISSENT TO AWARD NO. 9951, DOCKET NO. TE-8455

The facts in the dispute are correctly stated in the first paragraph of the Opinion of Board. A clerk on duty on Saturdays at the Carrier's agency at Wilson, North Carolina, telephoned a clerk who was on duty at the Greenville, North Carolina, agency and gave him the necessary information so that the latter could prepare two revenue waybills for two cars of tobacco which had been moved from Wilson previously on Memorandum Car Waybills. Each occurrence was on a Saturday. The claimant was employed as telegrapher at Greenville, with assigned work week Monday through Friday.

The parties recognize that billing is clerical work, the petitioner stating:

"* * * the instant claim arising out of clerks transmitting and receiving the billing information via telephone, the communication work, not the actual preparation of the waybill, is the primary basis for the claim."

This Division has generally held that not all communication work is reserved to telegraphers (Awards 4208 — Robertson, 5181, 5182 — Boyd, 5660 — Wyckoff, among others); that telegraphers have no claim to such work under the type of scope rule contained in the applicable agreement where they can not show that they have by custom and practice gained an exclusive right to the work. The petitioner could not show that by custom and practice telegraphers had gained such exclusive right on the Carrier involved. To the contrary, the record shows that for over a period of twenty or more years, particularly during the heavy tobacco movement, and at other times, it has been the practice for clerical employes or others at Wilson, North Carolina, to telephone information to a clerical employe at Greenville, North Carolina, for the

preparation of regular billing covering cars which moved from Wilson on Memorandum Car Waybills.

In recent Award No. 9572 (Johnson), involving the same parties as involved here, we said:

" * * * While the telephone has superseded the telegraph, not all telegraph rights have attached to it. Consequently, it is well settled that telegraphers have not the exclusive right to use telephones. Awards 1983, 4208, 4516, 4280, 5181, 5660, 7968. * * * "

The Division was not concerned in this docket with line-ups, as referred to in Award No. 4516—Carter, or with diversion orders referred to in Award No. 58 of Special Board of Adjustment No. 117. The Division was concerned here only with the clerk at Greenville receiving over the telephone from a clerk at Wilson information for the preparation of two revenue waybills. Thus, the issue was identical with the issue involved in Case No. 7, Special Board of Adjustment No. 136, Referee Whiting, in which it was held:

"A clerk in the Division Engineer's office at Columbus phoned information for billing four cars of old rail for shipment to the Pere Marquette Division to the Agent at Delaware. Billing is clerical work as well as agent's work, and no reason appears for finding that only telegraphers can transmit information regarding same. It had nothing to do with train operation or movement."

The record in this docket called for a similar Award and the claim should properly have been denied.

/s/ P.C. Carter

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ D. S. Dugan

/s/ J. F. Mullen