

Award No. 9953

Docket No. TE-8515

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Grand Trunk Western Railroad, that:

1. Carrier violated agreement between the parties hereto when on November 16, 1955 it caused, required and permitted conductor Train No. 475, to handle, by the use of the telephone, communication with train dispatcher at Mishawaka, Indiana, and
2. Carrier shall compensate W. W. Thompson, agent-operator, Mishawaka, Indiana, for 2 hours at time and one-half in accordance with Rule 5, account foregoing violation. Pro rata rate \$2.081 per hour. Total \$6.24.
3. Carrier shall compensate W. W. Thompson (or any other employe occupying position of agent-operator, Mishawaka, Indiana) for one call for each and every date subsequent to November 16, 1955, when train service employes of Train No. 475 are required or permitted to handle communications from Mishawaka, as aforesaid. The days and the date of violations and amounts due to be determined by joint check of Carrier's records.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between Grand Trunk Western Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective November 1, 1955.

This claim involves a communication handled by the conductor of Train 475 which runs westward through Mishawaka and is a local freight train. Olivers is a yard in South Bend, Indiana, approximately 4 miles distant from Mishawaka; Stillwell is located west of South Bend, approximately 20 miles distant. It will be noted that the operators, which would of course include the Agent at Mishawaka, at Stillwell and Mishawaka were instructed to transmit the information furnished by the conductors to the operator at Olivers yard. The Trainmaster (Mr. Knapp) knew, however, that Train 475 normally did not arrive in Mishawaka until after the Agent had gone off duty at 5 P. M. At Stillwell there are telegraph service employes on duty around-the-clock.

In the instant case the message was sent from a station where no Telegraph Operator is employed, and the message itself did not in any way affect the movement of trains. The purpose of the message and the use to which the information was put, was to expedite handling of the 13 cars in the train by the yard staff after the arrival of the train in the final terminal.

The Board has hitherto held that the sending of messages is not the exclusive prerogative of Telegraph Operators, when such messages are not "of record". The following extract from Award No. 5181 outlines a test as to whether a message is "communication of record":

"By reason of the character of the communication which was received and transmitted we would apply the tests of whether it is a communication relating to the control of transportation and if such a kind, a record should be preserved of it.

We do not believe the message here involved is of that description. It is advice from the Railway Express that a car is ready for movement. This was merely notice and by itself could not have affected the control of transportation."

Other Awards illustrate this principle. Award 4050 concerned claim for establishment of a Telegrapher position as well as claim in behalf of extra operators because of telephone messages transmitted by Coal Dock employees to Train Dispatchers. Some of the messages directed that cars be picked up; others were inquiries as to the locations of trains; still others asked for information and for contact with train employees. The Board found:

"We do not think any of them constituted orders for the movement of trains, in the common acceptance of that expression, which, of course, would be Telegraphers' work, and which, by practice, a telephone operator could do."

Award 4280 concerned claim of the Agent-Operator at Reform for a call because a conductor during period Agent was off duty, transmitted by telephone a message to the Assistant Chief Dispatcher at Tuscaloosa. The message contained advice that the conductor had two cars without waybills in his train. The Board held that the message did not involve the movement of trains and declined the claim.

This claim has been progressed in the usual manner up to and including the Vice President and General Manager, the highest officer on the property designated to handle claims and grievances.

All data contained herein have in substance been presented to the employees and are part of the question in dispute.

OPINION OF BOARD: This case involves a contention by the Employees that their rights are violated when a Conductor uses the telephone to transmit information to the Train Dispatcher.

The facts are not in dispute. On June 14, 1955, Carrier's Trainmaster, R. W. Knapp issued Bulletin 107, reading as follows:

"CONDUCTORS ON TRAINS 475-478—Locals,—South Bend Sub-Divns.

Effective at once please leave the total number of cars which you are taking into Olivers at Mishawaka and Stillwell respectively.

R. W. Knapp, Trainmaster

Nichols Yard
Olivers Yard
Blue Island
Elsdon

cc Operators—Mishawaka
Operator —Stillwell

Operators will transmit this information to Olivers."

At 7:12 P. M. on November 16, 1955, a train service employe, probably the Conductor of Train 475 (we have only to do with this train and Mishawaka, not 478 or Stillwell in this Docket) called the Train Dispatcher at Battle Creek on Train Dispatcher's telephone line, and the following conversation took place:

"Crew Member: Dispatcher, Mishawaka

Dispatcher: Yes.

Crew Member: 475 at Mishawaka, be out of here in about 10 minutes. Will have 13 cars overall and will stop at Depot.

Dispatcher: O.K. thanks."

At 7:37 P. M. on that evening the Train Dispatcher sent to the Operator at Olivers yard a telegram containing seven items regarding trains, the last one of which was

"No. 475 Eng. 5043 leave Mishawaka about 7:30 P. M., will have 13 cars in."

The Employes rely on their Scope Rule 1, Section (a) of which is in the usual form and includes "Telegraphers, Telephone Operators (except telephone Switchboard Operators and Train Dispatchers), Agents, Agent-Telegraphers" etc. Then comes the following:

"(b) Employes assigned by proper authority to railway telegraph or railway telephone service of any character or duration, and the Station Agents incorporated herein, will be considered Telegraphers.

(c) Employes whose duties require the operation of interlocked switches and (or) signals controlling the movement of trains . . . will be considered Levermen."

It should be noted here that the Agent at Mishawaka, who is covered by the Telegraphers' Agreement, regularly goes off duty at 5:00 P. M. and train 475 normally does not arrive until after that time.

The contention of Employees is that the Scope Rule, especially paragraph (b) contemplates "the performance by telegraphers of 'railway telephone service of any character or duration' that has been assigned to them by proper authority. It can mean nothing else and is, therefore, unambiguous". As we understand this position, it is that even though Rule 1 (a) may not give the telegraphers the exclusive right to the use of the telephone, the wording of Section (b) when added thereto accomplishes that very thing.

Carrier asserts that paragraph (a) lists the positions and (b) and (c) merely classify the employees covered by (a) of the Agreement as between telegraphers and levermen. In other words that (b) and (c) are only intra-agreement classification provisions which do not operate outside the agreement. That the Employees referred to in these sections are only the Employees included in paragraph (a); the positions of dispatchers and conductors are not included in Rule 1 (a) and the occupants of such positions, even though they use the telephone in their work, are not covered by Rule 1.

Carrier also takes the position that the communication in question was not a communication of record and therefore could not be the basis for a violation of the Agreement.

Other questions were raised by the parties hereto but for our purposes the decisive issues are (1) whether the Scope Rule gives the telegrapher exclusive control of telephone communications, and (2) whether the message on question was a communication of record.

Unless we attribute to paragraph (b) the meaning given to it by the Carrier's interpretation it is difficult to understand what it intends. The parties are agreed that it applies only to those designated in paragraph (a) and could not therefore affect the Conductor, nor the dispatcher. As the Agent was already covered by the Telegraphers Agreement it is difficult to see how it can change his situation. It doesn't say that telephone service shall be "exclusively" for telegraphers, which could easily have been done if that is what was intended. In our judgment it does not in any sense change the authority of paragraph (a) so as to make telephone messages exclusively for telegraphers. So that if Claimant is to recover he must do so under the holdings of awards construing the scope heretofore.

Under general Scope rules, such as the one we have here, such holdings are to the effect that the Claimant's right to the work which he contends belongs exclusively to him must be resolved from consideration of tradition, historical practice and custom and, of course, the burden rests upon the Claimant to prove his case. Award 6824-Shake, 9502-Elkouri, 8129-Smith, 9328 and 8331-Johnson, and others.

On this subject very little help has been given to us by either of the parties beyond statements in the record or of Board Members in briefs as to their views on the subject. Incidentally, while the factual circumstances of the November 16th incident are well detailed, there is nothing whatever to indicate that on any subsequent days, from Monday to Friday of each week, other violations occurred; in one place the record indicates that the particular train went through Mishawaka only Mondays, Wednesday and Friday of any week.

As to whether the message was a communication of record, it is well to remember that the use of the telephone is not reserved exclusively to telegraphers or any other craft. Award 5182-Boyd, 6703-Donaldson, 9343-

Begley and the fact that the substance of a telephone conversation is reduced to writing does not make it a communication of record. Awards 4265-Shake, 5660-Wyckoff. There is nothing in our record here which shows that the message was ever written. There is no contention here that the Conductor's use of the phone was in lieu of telegraph service formerly performed by an employe and there was no telegraph-operator at Mishawaka.

Under the circumstances and in view of the above, it is our belief that the message was not a communication of record and the claim should be denied. See also Award 5181-Boyd, 5660-Wyckoff, Awards 15, 16, 58 of SBA 117 and Award 58 of SBA 305 and 6363-McMahon and others.

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 Employe involved in this dispute are respectively Carrier and Employe 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 there has been no violation of the Agreement by the Carrier.

AWARD

Claim denied.

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.