

Award No. 10117

Docket No. TE-8486

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

James P. Carey, Jr., Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILWAY 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 has violated the agreement between the parties when beginning with May 2, 1953 it imposed upon the telegraphers at Marsden, North Carolina, without negotiation or consent, the duties and responsibilities of calling train and engine service employes for duty; that

2. These duties shall be removed from the telegraphers at Marsden unless a mutually satisfactory compensation for such work is reached by the Carrier with the duly accredited representatives of these employes; and that

3. Telegraphers O. B. Moore, A. R. Blow, J. B. Hale, R. K. Creech, C. J. Parker, J. F. Martin, E. J. Hudson, A. J. Jones, A. M. Wright and any other telegraphers employed at Marsden since May 2, 1953 shall be compensated for a call—two hours at overtime rate—for each occasion they have been required to perform these added duties.

EMPLOYES' STATEMENT OF FACTS: Marsden, North Carolina, is a "layover" terminal on the Carrier's main line, situated 125 miles southwardly from Norfolk, Virginia. Raleigh, North Carolina is 100 miles farther beyond Marsden. Train crews working out of Norfolk proceed as far as Marsden where they tie up for rest, following which they work back to Norfolk. Crews operating from the opposite direction out of Raleigh work as far as Marsden where they, too, tie up for rest before making the return trip to Raleigh.

Marsden may be properly described as being located in the weeds and woods four miles from Washington, North Carolina. The housing facilities are reflected in the fact that within a mile radius of the Marsden telegraph office there are some twenty-five or so small one-room shacks owned and occupied by train and engine service employes while laying over at this away-from-home terminal. In addition there is a crew house consisting of 16 small rooms, owned by the railway, where other crewmen bunk during their lay-over.

The Carrier maintains a three-shift 'round-the-clock telegraph office at Marsden with an Agent-Operator assigned 8:00 A. M. to 4:00 P. M., a second

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

For the reasons hereinbefore stated, respondent carrier submits that the claim is without merit or contractual foundation; that the actions complained of and made the basis for the claim are not violative of any schedule agreement rule, and that the claim should be denied, and urges that your honorable board so hold.

(Exhibits not reproduced)

OPINION OF BOARD: The basic question involved in this dispute is confined to this narrow area: may the carrier resort to the use of telegrams from the Chief Train Dispatcher to train crew members on lay over at Marsden, North Carolina, calling such crew members to report for duty at certain times for certain trains, and thereby require the telegrapher on duty at Marsden to deliver such telegrams to the addressees who normally reside within a comparatively short distance (not to exceed 1,000 feet in any one instance) from the station?

Marsden, population about 500, is a junction point for three divisions of the carrier's railroad. An agent-operator is employed on the first trick, and an operator-clerk on the second and third tricks, thus providing around-the-clock telegraphic service.

During the times covered by this controversy, seven or eight trains originated or terminated at Marsden, representing an average of approximately three trains during an operator's regular tour of duty. The carrier states that the operational requirements for normal train order service is of such limited quantity that it is insufficient to keep three telegraphers occupied during each eight hour tour of duty.

The crews protecting these train assignments into and out of Marsden lay over at that point between runs. Most of these crew members own small cabins situated at various points within an area of about 400 to 1,000 feet from the depot. Those crew members who do not own individual cabins reside in a company crew house which is about 600 feet distant from the depot. The carrier is required by agreement with engine and train service employes to call such crew members two hours in advance of the time they are to report for duty. Occasionally it becomes necessary to notify the train crew members of a setback in their original reporting time due to operational problems. Since May 1953 these crews at Marsden have been called by means of telegrams addressed to the crew members over the name of the Chief Dispatcher, which telegrams are transmitted on the carrier's communication system to the telegraphers at Marsden for delivery to the addressees.

Prior to May 1, 1953, train crews at Marsden were called as required by mechanical department laborers. With the adoption of diesel locomotives and operation thereof through Marsden (in lieu of steam power which formerly laid over for servicing at that point), the mechanical force at Marsden was discontinued, and the telegraphic method of calling train crews at Marsden was inaugurated.

The employes maintain that the carrier violated the scope rule, the basic day rule, and Article II of the telegraphers' agreement which provides that "Employes will not be required to suspend work during regular hours or to absorb overtime." The Scope Rule (Article I) does not specify the kind or

type of work included in or excluded from the duties to be performed by a telegraph operator. It clearly does not delineate in so many words exactly what the telegraph operators at Marsden, North Carolina, shall or shall not perform in consideration of their negotiated rate of compensation. The Scope Rule simply specifies the employee classifications, including agent-telegraphers, clerk-telegraphers, and telegraphers, to which classifications the rules, working conditions, and rates of pay set forth in the telegraphers' agreement will apply.

The burden of the organization's contention is that neither at the time the telegraphers' agreement was made in 1937 or subsequent thereto until May 1, 1953, were telegraphers at Marsden required to call crews; that such duties, as required, were performed by others which is an indication that the contracting parties did not contemplate or intend that crew calling was to be a part of the duties of telegraphers at Marsden and that accordingly such duties and responsibilities were not included in the telegrapher's negotiated rate. Arguing from that premise, they maintain that when the telegraphers are required to call train crew members by delivering telegrams to them, they are in effect, performing duties outside the traditional scope of their assignment and are thereby suspending their regular work during regular working hours in violation of Article II of the applicable agreement. Their position also embraces the point that the carrier's utilization of the telegram from the Chief Dispatcher to the train crew members is a subterfuge to avoid the claim that crew calling is not a part of telegrapher's work.

We think the employees fail to accord full force and effect to the operating rules of the carrier covering telegraph operators which we believe should govern the specific issue involved, as stated in the opening paragraph of these Findings.

Telegraphers at Marsden, North Carolina, are required by the operating rules to handle and deliver Company and Western Union telegrams. Operating Rule 770 requires that Western Union telegrams be handled in accordance with the rules and regulations of that Company, and Western Union regulations require that the privacy of such messages be observed. Rule 815 which has been effective since before the first telegraphers' agreement with the carrier was negotiated, pertains to Company messages and requires telegraphers to "promptly deliver messages received."

Neither the telegraphers operating rules nor the collective bargaining agreement make any distinction between the kind of Company telegrams that the telegraphers at Marsden, North Carolina, shall deliver. There is nothing in the record to suggest that telegrams to train crew members at Marsden, North Carolina, calling them to duty are not includible in the general category of "messages received" as specified in Operating Rule 815 which telegraphers must promptly deliver. The fact that prior to May 1, 1953 such messages were not ordinarily dispatched by telegraph does not prohibit the carrier from thereafter utilizing such method in the absence of some exclusionary provision in the collective bargaining agreement. We are not aware of such a provision. Since the operating rules clearly require that they must promptly deliver messages received, we think it immaterial what may have motivated the sender of the message in dispatching it by telegraph. Delivery of all messages received at Marsden, North Carolina, by the telegraphers employed at that point is, we think, clearly within the scope of their assigned duties.

It is noted that the method of delivery is not specified. It is conceivable that under some circumstances such a message might be delivered in the first

instance by telephone, if the addressee can thus be reached, whereas in other situations delivery might be effected only in person. It is the telegraphers responsibility to determine the appropriate means in the light of the immediate situation. The record in this case indicates that they reside a comparatively short distance from the railroad station, and that the telegrapher is the only available person to deliver the message. On the factual situation presented in this record, we are unable to find a sufficient basis for the claimed violation of the agreement and accordingly hold that a sustaining award is not indicated.

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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October, 1961.