

**Award No. 10367**

**Docket No. TE-8953**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

(Supplemental)

Albert L. McDermott, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE NEW YORK, CHICAGO AND  
ST. LOUIS RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on The New York, Chicago and St. Louis Railroad, that:

1. The Carrier violated the Agreement between the parties when it permitted or required a gang foreman, or an employe under his supervision, at Bushton, Ill., employes not covered by the Telegraphers' Agreement, to copy and handle train lineups by telephone from Charleston, Ill., on May 23, 24, 25, 26, 27, 31; June 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23 and 24, 1955, and

2. The Carrier violated the Agreement between the parties when it permitted or required a gang foreman or an employe under his supervision, at New Douglas, Ill., employes not covered by the Telegraphers' Agreement, to copy and handle train lineups by telephone from Sorento, Ill., on June 27, 28, 29, 30; July 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29, 1955.

3. The Carrier shall, because of such violations be required to compensate an extra employe if available, an amount equivalent to eight (8) hours at the pro rata rate for the division, or the senior idle telegrapher on his rest days at Charleston or Sorento, eight (8) hours at the time and one-half rate of the position occupied on each date set forth in this statement of claim.

**EMPLOYES' STATEMENT OF FACTS:** The Agreements between the parties to this dispute are by reference thereto made a part of this submission.

Bushton, Ill., the locale of one of the disputes involved in this submission is located 6.9 miles east of Charleston, Ill., on the third subdivision of the Cloverleaf District.

During the period of World War II, telegraphers were maintained at Bushton on an around-the-clock basis. However, subsequent to the termination of the war, forces were reduced at Bushton until in 1950, the one remaining employe, an agent, working a five-day assignment was dispensed with.

These claims deal with lineups secured by an extra gang on the Clover Leaf District at two locations, some regular morning lineups being secured direct from a dispatcher and some from an adjacent telegrapher. This gang, like other extra gangs on that district, is housed in camp cars and its assigned territory covers the entire distance between Toledo, Ohio, and East St. Louis, Illinois, a distance of approximately 454 miles. The gang moves over the railroad to any point where its services are required to take care of construction work, program work, and emergencies such as wrecks, derailments, or floods.

The character of the work performed by these gangs is the same today as it was forty years ago. The method of obtaining lineups since the introduction of the motor car follows custom and practice. There never has been a time when the existence or non-existence of telegraph offices had any relation to the point where work was to be performed or camp cars parked. Starting in 1950, the Carrier issued instructions that, when practicable morning lineups were to be taken from an adjacent telegrapher instead of direct from a dispatcher for the reason stated above. History, custom, and practice under the Scope Rule of the current agreement conclusively show that there has been no violation of the agreement as alleged by the Employees in Items 1 and 2 of the Employees' Statement of Claim.

Item 3 of the Employees' Statement of Claim requesting eight (8) hours' pay to an extra employe, if available, is in effect a demand that an extra employe be assigned to each motor car. Such a demand is clearly a far cry from reality and finds no rule support. The alternative demand of eight hours' pay to the senior idle telegrapher on his rest day at Charleston or Sorento (the adjacent telegrapher in each case) is likewise unrealistic and is not bottomed on any rule or practice but is an effort to expand a concession made by the Carrier in 1950 with respect to regular morning lineups. The expansion sought is to change the minimum call to an adjacent telegrapher which the Carrier has paid in cases where regular morning lineups were taken direct from the dispatcher to an eight (8) hour day for a telegrapher when any motor car lineup is copied, regardless of circumstances. Small wonder that there is a trend toward transporting gangs in off-track trucks and housing them in trailers when the Employees seek to penalize the Carrier for following a customary and traditional practice of long standing.

The claims are without merit and should be denied.

All that is contained herein is either known or available to the Employees and their representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This claim involves the copying and handling of lineups on the Carrier's property. This particular case is limited, however, to the copying and handling of train lineups by a Gang Foreman or an Employee under his supervision at points where no telegraph service Employees are employed.

The parties have submitted a well documented record beginning with the origin of the scope rule, as it is now written. It includes references to Supplement No. 13 to General Order No. 27 by the Director General of Railroads, effective October 1, 1918 as well as a history of the rule on the property covering a period of 40 years during which time it remained unchanged.

The scope rule of the effective Agreement does not define or describe work.

We recognize that history as to general practice is informative but we must in resolving this dispute resort to practice, tradition and custom on the property.

The parties related detailed stories concerning past practice. Organization in its second submission described the practice on the property after the installation of the first telephone, how years later the Carrier installed an occasional telephone set at points where no telegrapher was employed. The Organization stated that "the wide-spread abuse of these installations eventually led to the adoption of the train order rule, but this is not a part of the story we are relating."

We have made an exhaustive examination of the stories of the Petitioner and Respondent.

Parties rely on past settlements involving the handling of train lineups by Employees not covered by the Telegraphers' Agreement. Where practice, tradition and custom are involved, settlements cannot be ignored. The record indicates that beginning about 1950 the Carrier settled certain outstanding claims on the basis that where regular morning lineups were taken by Maintenance of Way Employees direct from a dispatcher instead of from an adjacent telegrapher, a call would be paid to an adjacent telegrapher. Carrier also issued instructions to that effect .

We believe from our examination of the record that practice, custom and tradition has been established on this property to allow the telegrapher at the adjacent station a call where the regular morning lineups are copied by an Employee not covered by the Telegraphers' Agreement direct from a dispatcher while at a point where no telegraph service Employee is employed.

Accordingly, we hold that the Agreement was violated and a call should have been paid to an adjacent telegrapher on those dates under Claim 1 when an Employee not covered by the Agreement copied the regular morning lineups direct from the dispatcher. The Agreement was not violated when such lineups were secured from an adjacent telegrapher on June 23 and June 24.

The Agreement was not violated under Claim 2 as the regular morning lineups on the dates involved in that claim were secured from an adjacent telegrapher.

We have reviewed the many awards cited. We have given particular attention to Awards 9952 and 8329 cited by the Organization. We do not believe that on this property under the circumstances herein this decision is at variance with the aforementioned awards.

**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 Carrier violated the Agreement.