

Award No. 10454

Docket No. TE-9495

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Chesapeake and Ohio Railway, that:

1. Carrier violated the agreement between the parties when on April 3, 1956 it required or permitted employes not covered by the agreement to transmit from Louisa, Kentucky and receive at Paintsville, Kentucky, a message.
2. Carrier be required to compensate J. S. Hinkle, Operator at Louisa, Kentucky and J. M. Wallace, first trick Operator at Paintsville, Kentucky, each for a call.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Louisa and Paintsville, Kentucky are stations located on Carrier's Big Sandy Subdivision. There is one position of operator, under the Telegraphers' Agreement, at Louisa with assigned hours from 6:45 A. M. to 2:45 P. M., seven days per week. At Paintsville there are three telegrapher positions performing service around the clock, first shift from 7:00 A. M. to 3:00 P. M., second shift from 3:00 P. M. to 11:00 P. M. and the third shift from 11:00 P. M. to 7:00 A. M. A Track Supervisor's office is located at Louisa and at Paintsville there is around-the-clock service performed by employes under the Yardmasters' Agreement.

At 6:05 A. M., April 3, 1956, Track Supervisor O. L. Nelson transmitted, by use of telephone, the following message which was received and copied by Yardmaster Perry at Paintsville:

this property. The findings of such Board are final and binding and should not be disturbed.

Carrier submits it has shown conclusively that there is no proper basis for the claim in this case. The telephoning involved constituted normal and proper use of the telephone as a means of conveying information in connection with the Carrier's regular operations, thousands of such telephone conversations occurring daily.

The National Railroad Adjustment Board and C&O-ORT Special Board of Adjustment No. 136 have ruled that for telephoning to belong exclusively to Telegraphers it must be telephoning governing train operation or movement.

The telephone conversation between Supervisor of Track Nelson at Louisa, Ky., and Yardmaster Perry at Paintsville, Ky., at approximately 6:05 a.m., April 3, 1956, did not govern train operation or movement.

Claim should, therefore, be Denied.

Carrier calls attention to the Employees' claim in favor of J. M. Wallace, first trick operator at Paintsville, Ky. As shown in Carrier's Statement of Facts the telephoning occurred at approximately 6:05 a.m., and third trick operator C. H. Robinette was on duty at Paintsville at this time. Had this been a proper communication of record belonging exclusively to telegraphers, Operator Robinette would have received it and not J. M. Wallace.

All data submitted have been discussed in conference or by correspondence with the employe representatives in the handling of this case.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is made that the Carrier violated the Labor Agreement when on April 3, 1956, it required or permitted Employees not covered by the Labor Agreement to transmit from Louisa, Kentucky, and received at Paintsville, Kentucky, a message.

The facts of this case are as follows:

J. S. Hinke is the incumbent of Telegraph Operator position at Louisa, Kentucky, assigned 6:45 a.m. to 2:45 p.m., Sunday through Thursday, with relief days Friday and Saturday, which are included in swing position. On April 3, 1956, Supervisor of Track O. L. Nelson communicated by telephone from Louisa, Kentucky, with Yardmaster Perry at Paintsville, Kentucky, requesting him to instruct the crew of work Train Extra 5090 to move camp cars from Louisa and Holt to Richardson. Yardmaster Perry copied those instructions in message form reading:

"Ditcher Work Train Extra 5090 Move camp cars from Louisa and Holt to Richardson and ditch as per J. J. Scarberry's instructions.

"/s/ O. L. Nelson"

Yardmaster Perry handed this message to Conductor Barber who was in charge of Work Extra 5090.

A Telegraph Operator was on duty at Paintsville, Kentucky, the morning of April 3 between 6:00 and 7:00 a.m. when the handling of the above message took place.

There is no dispute between the parties that on this Carrier's property the Scope Rule of the Agreement reserves the Telegraphers the exclusive right to the handling of messages relating to the operation or movement of trains.

The issue in this case stating it in its simplest form is whether or not the message set out in the facts of this case is or is not a communication of record effecting the movement of trains.

This Board has carefully studied the briefs, record and cases cited in connection with this dispute and comes to the conclusion that the message herein involved is a communication of record effecting a movement of trains.

Therefore this claim is sustained.

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 28th day of March, 1962.

DISSENT TO AWARD 10454, DOCKET TE-9495

This award erroneously holds that the Supervisor of Track transmitted by telephone a "communication of record effecting the movement of trains." It is clearly evident that the communication related solely to work, coming