

Award No. 10700

Docket No. TE-9676

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, 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 & Ohio Railway that:

1. Carrier violated the agreement between the parties when on April 22, 23, 24, 25, 26, 27, 29, 30, May 1, 4, 7, 8, 1956 it required or permitted an employe not covered by the agreement to transmit messages from Pikeville, Kentucky.

2. Carrier be required to compensate the Agent-Operator at Pikeville in the amount of a two-hour call on each day of such violation: H. G. Hopkins on April 22 and 29; C. H. Dickerson on April 23, 24, 25, 26, 27, 30, May 1, 4, 7 and 8, 1956.

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

Pikeville, Kentucky is a station on the Carrier's Big Sandy Sub-division. There is one position under the Telegraphers' Agreement at this location, that of Agent-Operator, with assigned hours from 7:30 A. M. to 4:30 P. M. (one hour meal period), seven days per week.

On the dates listed in the Statement of Claim, messages were transmitted, by use of telephone, from Track Supervisor's office at Pikeville to Shelby, Kentucky at a time when the agent-operator was off duty but nearby and available.

Claims were filed and handled in the usual manner up to and including the highest designated officer of the Carrier and have been declined.

POSITION OF EMPLOYES: It is the position of the Employees that the occupant of the Agent-Operator's position at Pikeville is entitled to perform all the work covered by the agreement at his station both within and outside his assigned hours.

In **Denial** Award in Case No. 7, the Board said in its Findings:

"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."

It will be seen that the telephoning in the instant case is similar to that involved in Special Board of Adjustment No. 136 Cases Nos. 3, 4 and 5. In those cases, the local officer telephoned certain information as to the work schedule of Maintenance of Way forces. Such information did not give authority to the work trains to move and the Board held that such telephoning did not belong exclusively to telegraphers, **on the basis that information telephoned did not involve the operation or movement of trains.**

In Case No. 7 of Special Board of Adjustment No. 136, a clerk at one location telephoned information to another location concerning the billing of cars. The Board held that such telephoning had nothing to do with train operation or movement and such telephoning did not belong exclusively to telegraphers.

Thus it will be seen that the question of telephoning as involved in the instant case, has been ruled on by the National Railroad Adjustment Board and by Special Board of Adjustment No. 136 on this property. The findings of such Boards 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 telephoning in the instant case was intra-city telephoning and the telephoning in this case did not involve control over the movement or operation of trains. The Carrier has shown that the National Railroad Adjustment Board has, under both circumstances, held that such telephoning is not work belonging exclusively to Telegraphers'.

Claim should, therefore, be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Certain facts are uncontroverted in the instant case. Pikeville, Kentucky, is a Station in the Big Sandy Division of the Chesapeake and Ohio Railway and there is one Agent-Operator

(a seven day position) stationed to Pikeville, Shelby, Kentucky, is the junction point of the Big Sandy Subdivision and the Sandy Valley and Elkhorn Subdivision, and is the terminal for district trains. Telegraph operators are employed continuously (three trick shifts) at Shelby. There is an Agent-Operator at Pikeville who handles messages similar to the ones involved in this controversy during his assigned hours. When he is not on duty similar messages are telephoned directly by the Track Supervisor to the operator assigned to duty at Shelby. The office of Carl Copher, Supervisor of Track, is located at Pikeville.

It is the contention of the Petitioner that at the times shown in the Statement of Claim, Mr. Copher, at Pikeville, transmitted by the use of the telephone, the telegrams set forth in the record, to the operator (telegrapher) on duty at Shelby, for delivery to addresses at Shelby or to be relayed by the operator at Shelby to operator on duty at Ashland, Kentucky. It is the contention of the Petitioner that under the Scope Rule of the Telegraphers' Agreement there was reserved to Telegraphers the exclusive right to handle communications of record and under Rule 27(b) of the agreement these messages should have been transmitted to the agent-operator at Pikeville. Petitioner maintains that these messages were communications of record effecting the movement of trains.

It is the position of the Carrier that Copher is the Supervisor of Track for the Shelby District and though his office is located at Pikeville, it is necessary for him to handle his operations with Shelby, the terminal headquarters; that it has been his practice in lining up his work to call the operator at Shelby, have him make up necessary copies and make distribution of the work line up; that it has been the natural and customary procedure for many years that when the operator is on duty at Pikeville he relays messages through him to the operator at Shelby; that there has been no attempt to circumvent telegraphers in lining up this work; the Carrier insists that the telephoning in the instant case had nothing to do with the control of the movements of the work trains or any other trains, that this was merely information in connection with Maintenance of Way Department work that was to be performed.

It has not been denied by the Petitioner that the practice has been in the past for the Track Supervisor to send messages to Shelby through the operator at Pikeville when he is assigned to duty, and when the operator at Pikeville is off duty for the Track Supervisor to telephone the messages directly to the operator assigned to duty at Shelby.

Many awards of this Board have held that not all telephone communications are reserved exclusively to telegraphers under the Scope Rule. An examination of the messages transmitted by the Track Supervisor in this case does not indicate they were of nature to control the operation or movement of trains; nor, does the mere fact that someone reduces the substance of a telephone call to writing necessarily make it a message of record as that phrase is commonly understood in railroad operation.

It has been urged by the Petitioner that Award 6419 and Award 10454 involved these same parties and are controlling in the instant case. The communications in Award 6419 related to flat wheels, baggage and the movement of passengers which distinguishes them clearly from the messages in the present case. We find this significant comment in the award: "This award is based not primarily on the use of the telephone as such, but rather the character of the use to which the phone was put."

In Award 10454 there was a determination of whether or not **under the facts of that case** the message was a communication of record effecting the movement of the train. The facts herein are distinguishable from those in Award 10454.

This Board finds that the telephoning by the Track Supervisor to the operator at Shelby had nothing to do with the control of the movements of work trains, that he was merely furnishing information in connection with Maintenance of Way Department work that was to be performed. They were not messages of record involving the movement or operation of trains within the purview of the Scope Rule reserving the transmission of such messages by telephone, exclusively to Telegraphers.

In 1956, a Special Board of Adjustment was held on the property wherein these present parties were involved. In Special Board of Adjustment 136 — Case No. 3 — we find the following:

“The Assistant Trainmaster at Marion phoned the operator at Upper Sandusky to advise the work train crew and Supervisor of Track, who was with the work train on that day, of the discontinuance of the work train at the end of the day, and that the engine would be moved to Parsons. This is not a message governing train operation or movement but was *informative information* and hence not necessarily a matter of record. Thus, it was not work reserved exclusively to telegraphers.”

See also Case No. 4 of the same Special Board of Adjustment.

The precedence in delivering messages to the operator at Shelby heretofore described, has been followed for many years without any protest from the Petitioner (at least none disclosed by the record). It cannot be said, then, that the telephoning of messages in the instant case was reserved exclusively to the Agent-Operator at the Pikeville Station.

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 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 20th day of July 1962.