

Award No. 10777

Docket No. TE-9141

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY — WESTERN LINES**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway; that

1. The Carrier violated the Agreement between the parties when, on August 10, 1955 and September 16, 1955, it required or permitted employes not covered by said Agreement to perform work covered thereby; and

2. The Carrier shall compensate the idle telegrapher at La Junta, Colorado, and the idle telegrapher at Dodge City, Kansas, going on or off duty nearest to the time the violation occurred on August 10, 1955, the equivalent of a call (three hours' pay) at the rate of the positions they occupy; and shall compensate the idle telegrapher at La Junta, Colorado, going on or off duty nearest to the time the violation occurred on September 16, 1955, the equivalent of a call (three hours' pay) at the established rate of his position.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

At 4:10 A.M. August 10, 1955, a mechanical department employe at Dodge City, Kansas, contacted a clerk in the Roundhouse at La Junta, Colorado, on a telephone and transmitted the following message:

"Swing joint on diesel on Train No. 223 this A.M. is leaking repair at La Junta."

At 1:50 A.M., September 16, 1955, a roundhouse clerk at Newton, Kansas, contacted a clerk in the roundhouse at La Junta, Colorado, and transmitted the following message:

"Unit 328L on 2nd 123 has dead man foot pedal cut out may need diaphragm. Also, engine lineup as follows: 123-40CBAL, 223-39CBAL, 2/123-328LAB, 21-37CBAL, 17-310L 308BAL, 35-150CA-132B150L."

conversation that took place between the two Roundhouse Clerks and (2) is a companion claim to that which has been submitted in behalf of C. Jones at Newton, Kansas on September 17, 1955 in a claim which is being appealed to the Third Division in pursuance of the notice the Petitioner's President, Mr. G. E. Leighty, addressed to the Board's Secretary under date of July 9, 1956 (ORT File 206-5).

In other words, the last-mentioned claim of the Petitioner in behalf of C. Jones at Newton, Kansas on September 17, 1955 actually occurred on September 16, 1955 and involved the same telephone conversation that is the subject of Claim No. 2 in the instant dispute. Like the telephone conversation which is the subject of Claim No. 1 in the instant dispute, the telephone conversation that took place on September 16, 1955 between the Roundhouse Clerks at Newton and La Junta was a one-sided conversation in which the Roundhouse Clerk at Newton imparted certain information to the Roundhouse Clerk at La Junta. Since the Roundhouse Clerk at La Junta imparted no information whatever to the Roundhouse Clerk at Newton during the conversation on September 16, 1955, it will be obvious that, even if that telephone conversation had involved the transmission of a matter of record, and the Carrier denies that it did, there would have been nothing for the Roundhouse Clerk at La Junta to impart by telegram for the reason that he did not transmit any information to the Roundhouse Clerk at Newton. In other words, if it had been necessary under the Telegraphers' Agreement for the Assistant Roundhouse Foreman and the Roundhouse Clerk at Newton to transmit the subject-matter of their respective telephone conversations with the Roundhouse Clerk at La Junta on August 10 and September 16, 1955, by means of the telegraph, it **would not** have been necessary for the Roundhouse Clerk at La Junta to make any reply or confirmation of those telegrams, which is exactly what the Employees are attempting to contend in submitting the claim they have in behalf of the unidentified idle telegrapher at La Junta on August 10 and September 16, 1955.

In conclusion, the Carrier respectfully reasserts that the Employees' claim in the instant dispute is entirely without support under the Agreement rules and should either be dismissed or denied in its entirety for the reasons set forth herein.

The Carrier is uninformed as to the arguments the Organization will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence or argument as it may conclude are necessary in reply to the Organization's ex parte submission or any subsequent oral arguments or briefs the Petitioner may submit to the Board in this dispute.

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

OPINION OF BOARD: The undisputed factual circumstances are as follows:

"At 4:10 A.M. August 10, 1955, a mechanical department employe at Dodge City, Kansas, contacted a clerk in the Roundhouse at La Junta, Colorado, on a telephone and transmitted the following message:

'Swing joint on diesel on Train No. 223 this A.M. is leaking repair at La Junta.'

"At 1:50 A.M., September 16, 1955, a roundhouse clerk at Newton, Kansas, contacted a clerk in the roundhouse at La Junta, Colorado, and transmitted the following message:

'Unit 323L on 2nd 123 has dead man foot pedal cut out may need diaphragm. Also, engine lineup as follows: 123-40CBAL, 223-39CBAL, 2/123-328LAB, 21-37CBAL, 17-310L 308BAL, 35-150CA132B150L.'

"The employes who transmitted and received the above quoted messages are not covered by the Telegraphers' Agreement.

"At La Junta, and at Dodge City, the Carrier maintains relay telegraph offices in which several employes covered by the Telegraphers' Agreement are employed in around the clock service."

It is the position of the employes that the Carrier failed to respect the agreement between the parties when it required or permitted employes not covered by said Agreement to perform work covered thereby.

It is the Carrier's initial position that the two claims of the employes in the instant dispute are not proper claims for consideration of the Third Division and should be dismissed because of the Petitioner's failure and refusal to comply with the mandatory requirements of Article V-1 (2) of the so-called Non-Operating Employees' National Agreement of August 21, 1954 and identify the individuals in whose behalf the two claims were presented.

Without prejudice to its initial position that the two claims of the Petitioner in the instant dispute are not proper claims for the consideration of the Board and should be dismissed, it is the Carrier's further position that the Employes' claims are wholly without support under the Agreement rules and should be denied in their entirety for the reasons that, first the complained-of telephone conversations on August 10 and September 16, 1955 did not constitute the transmission of any train order or message of record which employes subject to the Telegraphers' Agreement had rights to transmit, and second, there is no Agreement Rule or understanding in effect between the parties hereto which serves to give employes subject to the current Telegraphers' Agreement a monopoly right to the use of the Carrier's communications telephone system.

This dispute involves the identical issue raised and disposed of in Award Number 10364, between the same parties, on the same property and including one of the same messages complained of here.

In Award Number 10364 the Board held that the Agreement was violated and the claim was sustained. It therefore necessarily follows that the Board find in this case that the Agreement was violated and that the claims be 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 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 violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of September 1962.

**CARRIER MEMBERS' DISSENT TO AWARD 10777,
DOCKET TE-9141**

Award 10777 follows Award 10364. We dissented to the decision in Award 10364, and by reference thereto we register our dissent to Award 10777.

/s/ **O. B. Sayers**
O. B. Sayers

/s/ **G. L. Naylor**
/s/ G. L. Naylor

/s/ **R. E. Black**
R. E. Black

/s/ **R. A. De Rossett**
R. A. De Rossett

/s/ **W. F. Euker**
W. F. Euker