

Award No. 10825
Docket No. TE-8928

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD 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. Article 1 and other rules of the Telegraphers' Agreement were violated when and because the Carrier permitted or required,

(a) The Star Agent at Norman, N. C., which position is classified as non-telegraph, non-telephone agency, to transmit a message by commercial telephone on the date of June 6, 1955.

(b) The Star Agent at Glendon, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message by Carrier's telephone on the date of June 23, 1955.

(c) The Star Agent at Glendon, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message by Carrier's telephone on the date of July 1, 1955.

(d) The Section Foreman at McCullers, N. C., to transmit a message by Carrier's telephone on the date of August 4, 1955.

(e) The Star Agent at Middlesex, N. C., which position is classified as a non-telegraph, non-telephone agency, to receive and transmit two messages by commercial telephone on the date of September 8, 1955.

(f) The Star Agent at Glendon, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message by Carrier's telephone on the date of September 9, 1955.

2. The Carrier shall now be required to compensate a senior idle operator, extra in preference, a day's pay for each date at each point specified because of such violative action.

EMPLOYEES' STATEMENT OF FACTS: The basic agreement between the parties bears the effective date of August 1, 1937, with amendments from time to time thereafter. All references to the Agreement will bear on rules or rates of pay currently effective unless otherwise noted.

Norman, N. C., is situated on the Carrier's Star - Candor - Ellerbe branch of its Western District, approximately 102 miles southwest of Raleigh, N. C.

Glendon, N. C., is located on the main-line of the Western District, 61 miles southwest of Raleigh.

McCullers, N. C., is approximately 12 miles southwest of Raleigh.

Middlesex, N. C., is 30 miles northeast of Raleigh.

The August 1, 1937 Agreement, as of that date, provides in Article 32 — Wage Scale, as follows:

"The minimum rate hereafter established for non-telegraph offices referred to in Section (b) of Article 2 of this agreement will be \$62.50 per month, except at Glendon, Pantego, Northwest and Hallison. The minimum rate applicable to telegraph positions hereafter established will be 58¢ per hour on branch lines and 59¢ per hour on the main. It is understood that the main line constitutes the track from Norfolk, Va., to Charlotte, N. C., inclusive.

A — Agent
 O — Operator
 AO — Agent-Operator
 OC — Operator-Clerk
 YC-O — Yard Clerk-Operator
 L — Leverman
 OL — Operator-Leverman
 T — Towerman

* * * * *

"Western District

Station	Position	Pro-rata Hourly Rate	Overtime Hourly Rate	Monthly Rate
Norman	A-O	0.58 ****	0.87	
*Glendon	A	****		\$40.43
*Middlesex	A	****"		72.93

it being also understood and agreed by all present that the copying of train orders or otherwise using outside telephones and telephones at places where no operator was regularly employed by conductors and others not covered by the telegraphers' agreement did not constitute a violation of the agreement. * * *,"

This letter was in ratification of understanding reached in conference at Norfolk, Virginia, December 13, 1934, and it recognized and ratified the then existing practice, and agreed that it would be continued and would not constitute a violation of the agreement.

Certainly, when one party to an agreement, understanding, interpretation or practice proceeds to conduct its business in accordance therewith, and does so over a long period of years, with ratification and acquiescence of the other party, the other party cannot then be heard to contend that the conduct of the party to such agreements, understandings, etc., is violative of the intent thereof. Many awards of the Division have held that acquiesced in practice is equivalent to a contemporaneous construction of the contract.

Respondent respectfully submits that no where in the scope rule of the controlling agreement is there contained anything, either expressly or impliedly, which purports to be a specification of the work reserved exclusively to the telegraphers' class. In such cases your Division has held, and rightly so, that to determine where the parties have placed themselves by their agreement we must look to tradition, historical practice and custom; such historical practice and custom on this railroad is fully set forth in and substantiated by Carrier's Exhibits "A" and "B". The petitioners have brought this case to your Board, and the burden is upon them to prove by substantial evidence that this has not been the practice.

All of the data contained 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 hereinabove stated, respondent carrier holds that the claim is without contractual basis or merit, is contrary to recognized and accepted and agreed-upon practices of many years, and that the claim should be denied, and urges that your honorable board should so hold.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier Star Agents at Norman, Glendon and Middlesex, N. C. utilized a commercial phone to call the nearest agent operator for the purpose of obtaining freight rates routing of car, weights of car, information concerning payment and a Section Foreman utilized a phone at McCullers, N. C. for the purpose of submitting the time for his crew.

The Scope Rule in question identifies those ones who are classed as telegraphers, but does not define or illustrate their work.

There is nothing in said Agreement which would prohibit this type of Employe from utilizing the telephone. If a prohibition of such act is intended, it should have been so expressed in the Telegraphers' Agreement with the Carrier.

The messages submitted herein as interpreted do not effect the operation of trains and we do not consider such messages within the exclusive province of the telegraphers.

We believe that Awards 9572 and 9573 sustain our position in that the instant claims should be denied.

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 28th day of September 1962.