

Award No. 10951

Docket No. TE-9744

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**JOINT TEXAS DIVISION OF CHICAGO, ROCK ISLAND AND
PACIFIC RAILROAD COMPANY — FORT WORTH AND
DENVER RAILWAY COMPANY
(BURLINGTON-ROCK ISLAND RAILROAD COMPANY)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Joint Texas Division of Chicago, Rock Island and Pacific Railroad and Fort Worth and Denver Railway, that:

1. Carrier violated and continues to violate the Agreement between the parties at Bardwell, Texas; Streetman, Texas; Tomball, Texas; Singleton, Texas and Newby, Texas when it required or permits employees not covered by the Telegraphers' Agreement to receive and copy train line-ups.

2. Carrier be required to compensate the following employees the equivalent of a two hour call on the dates following the name of claimant:

- (a) Charles D. Howard, Agent-Telegrapher, Bardwell, on March 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 1956.
- (b) Claire H. West, Agent-Telegrapher, Streetman, on April 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 1956.
- (c) C. A. Thornburg, Agent-Telegrapher, Tomball, on March 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 1956.
- (d) Horace W. Whitehouse, Agent-Telegrapher, Singleton on March 22, 23, 26, 27, 29, 30, April 3, 4, 5, 9, 18, 19, 1956.
- (e) Adrian Vess, Agent-Telegrapher, Newby, on March 26, April 2, 8, 1956.
- (f) J. H. Henderson, Agent-Telegrapher, Newby on March 20, 21, 22, 23, 27, 28, 29, 30, April 3, 4, 5, 6, 10, 11, 12, 13, 17, 18, 19, 20, 24, 25, 26, 27, 1956.

3. Carrier further be required to compensate the occupant of the Agent-Telegrapher position at each of the stations mentioned in paragraph 1 the equivalent of a two-hour call on each subsequent date that a violation occurs continuing on a day-to-day basis until the violation is corrected.

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

The claimants in the instant case are occupants of positions classified as Agent-Telegraphers at their respective stations. The assigned hours at Bardwell are from 9:00 A. M. to 6:00 P. M., one hour meal period; Streetman 9:00 A. M. to 6:00 P. M., one hour meal period; Newby 7:00 P. M. to 4:00 A. M., one hour meal period; Singleton 8:00 A. M. to 5:00 P. M., one hour meal period; Tomball 8:30 A. M. to 4:30 P. M., no assigned meal period. All have assigned rest days of Saturdays and Sundays. The Agent-Telegrapher at Tomball is relieved and the other positions involved are not filled on rest days. The positions are all listed in the wage scale, Article XXIII of the Agreement effective February 1, 1938 and Rule 43 of the current Agreement effective June 15, 1956.

Under date of March 15, 1956, the Superintendent issued the following instructions concerning lineups:

"Joint Texas Division
of
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD CO.
FORT WORTH & DENVER RAILWAY CO.

Teague, Texas — March 15, 1956
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TRAIN DISPATCHERS
MAINTENANCE FOREMEN
AGENTS & OPERATORS
TRACK CAR OPERATORS

"When practicable, track cars should not be placed or moved on main track unless current lineup has been received by the track car operator. Additional lineups must be obtained when necessary and communication is available.

Each lineup will be written on a separate sheet of Form 3270, retained and forwarded at close of work week to Superintendent for checking.

Lineups obtained by telephone must be repeated by one or more of the recipients to insure accuracy. Each lineup must be read aloud to all occupants of the track car and be in possession of employee in charge of the car.

Lineups will be issued for stated period and specified territory and will include all trains except within territory where yard engines are employed.

but is not a part of the governing schedule in this dispute; thus, there existed in no measure a rule that reserved to the telegraphers the exclusive right to handle "orders" with the train dispatcher. If by any lack of understanding a motor car line-up, which confers no rights or authority, should be classed as an "order," the Board still could not, in the face of the absence of a rule similar to the standard "Handling Train Orders" rule, hold that employees represented by the Petitioning Organization held the exclusive right to handle motor car line-ups. To do so would be in truth and in fact giving them a new rule, which the Board has no authority to do.

In view of the facts before it, the Board must deny this claim in its entirety for lack of merit.

Carrier affirmatively states that all data herein and herewith submitted have previously been submitted to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts are not in dispute. With two exceptions on each of the dates involved in the claim, a section foreman or some other non-telegrapher copied a train line-up by use of the telephone directly from the dispatcher at a time when no telegrapher was on duty. The issue here is whether the telegraphers' rights were violated by this method of obtaining line-ups.

The Organization contends that the obtaining of such line-ups by the section foremen was in violation of the Scope Rule of the Agreement, that under the Scope Rule the telegraphers have a right to this work, and that the fact that this work has in the past been performed by section foremen does not change the Scope Rule.

The Carrier asserts that the Scope Rule does not reserve this work exclusively to the telegraphers; and that we must, therefore, look to past practice on the Carrier to determine the matter; and that it has been the practice since the mid 1930's on this Carrier for section foremen to receive train line-ups from dispatchers.

Past awards in this Division on the identical question—where the line-up is secured directly from the dispatcher—are in conflict. There has been no prior award involving the same parties.

The Scope Rule of the Agreement does not purport to describe the work encompassed by it or to reserve work to certain employees. It merely lists the classes of employees who are covered by the Agreement. We must, therefore, look elsewhere to determine whether the telegraphers have a right to the work in question. Some awards of this Division have said that in such a situation we must look to traditional customary work of classes of employees listed to determine whether the parties intended to reserve the work to the classes listed. However, even under this approach if the Carrier can show that there has been a long and well known practice for employees other than telegraphers to handle the type of work involved here, the presumption that the work belongs to the

telegrapher is rebutted. In effect an exception to the Scope Rule is thus created. See the language of Award 10673 (Ables).

What is important here is the practice on this particular Carrier. The Carrier has shown conclusively that since 1936, when telephone installations were completed, line-ups have been obtained by section foremen and others from the train dispatcher direct. New agreements have been entered into by the parties in the meantime with no change in the wording of the Scope Rule. The Telegraphers never protested the practice until 1956, when the present claims were filed, and a proposed rule change was submitted. The proposal was rejected. Furthermore, instructions were issued to Maintenance of Way employes on January 1, 1941, requiring them to get "advice from the Dispatcher as to train movements". This was not protested by the Employees until 1956.

The obtaining of the line-ups in the present case was in accord with those instructions. It was in accord with the long established practice on this Carrier, and was, therefore, not in violation of the Agreement. Whatever right the Telegraphers may have had to this work under the Scope Rule has been lost by the long established practice which went unchallenged for twenty years. The Organization's representative has advanced the novel theory that although the Employees have lost the exclusive right to the work of obtaining line-ups, they have not lost their right to participate to some extent in the handling of line-ups. In the Board's view, this position is without merit.

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 7th day of December 1962.