Award No. 10954
Docket No. TE-9594

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railroad that:

Carrier violated the agreement between the parties when it required or permitted employes not covered by the agreement to transmit and receive messages.

1. (a). At Harlan, Iowa on February 7, 1956, at a time when the Agent-Telegrapher was off duty, a conductor transmitted a message to the train dispatcher.

   (b). Carrier be required to compensate F. J. Mentzer, Agent-Telegrapher at Harlan, in the amount of a minimum call payment.

2. (a). At Fair Grounds, Iowa, on December 23, 1955, at a time when no operator was on duty, a special agent received (copied) a message from the train dispatcher.

   (b). Carrier be required to compensate F. C. Kitchen, Operator at Fair Grounds, in the amount of a minimum call payment.

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

CASE #1 — HARLAN, IOWA

Harlan, Iowa is a station with one position covered by the agreement between the parties, that of Agent-Telegrapher with assigned hours 6:03 A. M. to 3:30 P. M. (one hour meal period), assigned rest days Saturdays and Sundays, position not filled on rest days.

On Tuesday, February 7, 1956, train No. 91 while switching on the auxiliary tracks derailed a car where a vehicular road crossed the team

sation to give or receive certain information is or is not construed as the handling of messages or reports of record is not pertinent in the adjudication of this dispute in view of the fact that such telephone conversations are not construed as a violation of Addendum No. 3 (Carrier's Exhibit "A"). Addendum No. 3 specifically provides:

"It is understood and agreed that:

"(a) telephone conversation to give or receive information about work, and

"(b) telephone conversation to give or receive information about the arrival of trains * * *

will not be construed as a violation of this agreement."

In Claim No. 1 the telephone conversation was about the work being performed at Harlan by Train 91; in Claim No. 2 the telephone conversation was about the arrival of a train at Fair Ground and obviously claims should be denied since the parties to this dispute have agreed that such telephone conversations are permissible and are not violative of the contractual agreement.

Furthermore, in Claim No. 1, the telephone call to the dispatcher was due to an emergency, "unforeseen situations where life or property may be in jeopardy, requiring immediate attention" (see note—Addendum No. 3). As previously shown, it was the Conductor's opinion that the team track was unsafe and he so notified the dispatcher to avoid serious damage to other trains. Obviously, this was an unforeseen situation requiring immediate attention, and in the circumstances clearly was not violative of Addendum No. 3.

We have shown that telephone conversations of the nature involved in this dispute do not constitute work reserved exclusively to telegraphers; in fact, Addendum No. 3 specifically provides that such telephone conversations are permissible and are not violative thereof. In the circumstances, we respectfully request that claims herein be denied.

Carrier's Exhibit "A" is attached hereto and made a part hereof as if fully set forth herein.

The Carrier affirms that all data in support of its position has been presented to the other party and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Two claims are to be considered by this Board.

Claim No. 1

Claimant was employed as Agent-Telegrapher at Harlan, Iowa, Monday through Friday with assigned hours 6:30 A. M. to 3:30 P. M. His assigned rest days were Saturdays and Sundays.

On Tuesday, February 7, 1956, at 10:45 P. M. train 91 while switching at Harlan, derailed a car. The conductor of the train, using the train

dispatcher's telephone at Harlan, reported the derailment to the dispatcher and said that "he intended to re-rail the car with re-railing frogs." He also reported that the rail was full of mud and ice and that it should be inspected before it is used. In that condition, the rail was a hazard to other trains which may be using the track. The conductor also left a message for the Claimant and the Section Foreman which read as follows:

> "Please clean out crossing at first crossing east of stock yards on team track, we had a car on the ground. When get it OK, have them OK it as I am putting an order on it."

The claim is for two hours at time and one-half because Claimant was not called out to report the derailment, the re-railment and the hazardous condition of the track.

The numerous Awards cited by the Organization are not relevant. The facts in the case here considered are distinguishable from the facts recited in each of those Awards.

Addendum No. 3 dated July 11, 1939, was adopted by the parties as a modification and as an exception to the Scope Rules. This exception applies solely to train and engine service employes, including conductors.

It is necessary that we consider this Addendum which reads as follows:

> "**MEMORANDUM OF AGREEMENT** between the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Engineers, Order of Railway Conductors, Brotherhood of Railroad Trainmen, Order of Railroad Telegraphers and the Chicago Great Western Railroad Company.
>
> In settlement of the employes' request for a rule to govern the handling of train orders, messages and/or reports of record by train and engine service employes, it is agreed that train and/or engine service employes will not be required to call dispatchers on telephone in connection with train movement or take train orders over the telephone, except in emergency.
>
> It is understood and agreed that:
>
> (a) telephone conversation to give or receive information about work, and
>
> (b) telephone conversation to give or receive information about the arrival of trains, and
>
> (c) at junction points and at spur tracks, the operation of which prevents train and engine crews from having constant observation of passing trains, at stations where telegraphers are not now employed, telephone check on overdue trains,

will not be construed as a violation of this agreement.

NOTE: Emergency is defined as follows: Storms, fogs, casualties, accidents, obstructions caused by wrecks, washouts, high water, slides and snow blockades, etc., unusual delay due to failure of fixed signal to clear, unusual delay to trains due to hot boxes, engine or other equipment failures, and break-in-twos, or other unforeseen situations where life or property may be in jeopardy, requiring immediate attention, which could not have been anticipated when train was at previous telegraph office and which would result in serious delay to trains.

This agreement shall become effective as of August 1, 1939 and remain in effect until changed in accordance with the provisions of Section 6, Railway Labor Act, Amended."

Among other things, conductors are permitted to call dispatchers on the telephone in the event of an emergency. There is no dispute that train 91 was derailed at about 10:45 P. M. on February 7, 1956. There is also no question that the track which caused the derailment was full of mud and ice. Certainly this situation constituted an emergency within the definition of Addendum No. 3. The mere fact that the train crew was able to re-rail the car without the help of an emergency crew does not change the situation. Furthermore, the condition of the rail was hazardous for other trains which may have been required to use it. The conductor's report of the rail's condition may or could have prevented other derailments. Such a report also comes within the definition of emergency as contained in Addendum No. 3.

In view of the applicability of the emergency provision of Addendum No. 3, it is not necessary to consider other arguments presented by the parties.

There is no merit to Claim No. 1.

Claim No. 2.

Claimant, F. C. Kitchen, was employed as a Telegrapher at Fair Ground (Dubuque), Iowa. He was scheduled to work from 4:00 A. M. to 12:00 noon, Tuesday through Saturday, with rest days Sunday and Monday. There is also another Telegrapher position at that station assigned to work from 2:00 P. M. to 10:00 P. M. Thursday through Monday, with rest days Tuesday and Wednesday. Both are seven day positions and relief Telegraphers work on the rest days.

On Friday, December 23, 1955, Special Agent, Walton, was driving a relief train crew for Train 143 by automobile from Oelwein. The regular train crew on Train 143 was approaching the 16 hour limit imposed by the Hours of Service Act and a new crew was required to relieve them. When the Special Agent arrived at Fair Ground with the relief crew, Train 143 was not there. It was then 1:30 A. M. The Special Agent telephoned the Train Dispatcher to inquire about Train 143 and he was advised that Train 143 was unable to make Fair Ground within the 16 hour limit. For that reason the train crew had to tie up at Aiken. Aiken is approximately 19 miles east of Fair Ground. The Special Agent then taxied the relief crew to Aiken.

The claim is for two hours at time and one-half rate because Claimant was not called out to make the telephone call.

It is the Organization's position that the transmission and reception of messages by telephone is reserved exclusively to Telegraphers under the Scope Rule of the Agreement.

The Scope Rule does not clearly and specifically define the work which is reserved exclusively to the Telegraphers. If the Scope Rule should have enumerated the job classifications instead of job titles, then this Board would be compelled to hold that all work described in such classifications belonged exclusively to the telegrapher. Award 10442 (Gray). This is a well accepted principle of this Board. In Award 8130 (Smith), cited by the Organization, we said:

> "That the use of the telephone is not restricted to any one craft is well settled. Prior to the general use of the telephone, communications were generally transmitted by Morse code. Since that time, a fine, but none the less clear line of distinction has been drawn between the types of communications which are, and are not generally considered the type, transmittal of which is covered by the Scope Rule of the effective agreement."

The Special Agent telephoned the Train Dispatcher to inquire about Train 143 so that he could deliver the relief crew. There was no train or train line-up handled and the record does not show the conversation was written or recorded.

In the absence of a clear definition of the Scope Rule, history, tradition, custom and practice must determine what work was reserved exclusively to the Telegrapher and further, in such a case, the burden of proof rests on the employes. Awards 10673 (Ables), 10425 (Dolnick), 10385 (Dugan), 10581 (Russell), 10604 (Dolnick), 6824 (Shake) and others.

The Carrier has submitted four statements from supervisory employes stating that it has been the practice, tradition and custom for many years that employes other than Telegraphers shall call train dispatchers on the telephone to ascertain information about train arrival. This has been and is a daily occurrence whether or not a Telegrapher is on duty. In reply to these statements the Organization says:

> "The Carrier presents statements from the Superintendent, the Superintendent of Motive Power and Engines, the Assistant Chief Engineer and the Assistant to General Manager. A nice group of gentlemen holding appointive positions at the discretion and whim of the Carrier. The statements do have some value as evidence. Evidence that the gentlemen wish to remain in the good graces of the boss."

We said in Award 10425 (Dolnick) that the Organization's statement similar in substance to that above quoted was "not sufficient to establish by a preponderance of evidence that by tradition, historical practice and custom the work belongs exclusively to the Telegraphers." No affirmative evidence was submitted by the Organization to contradict the statements. We are obliged to reaffirm this principle.

There is no merit to Claim No. 2.

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 Carrier did not violate the Agreement.

AWARD

Claims are 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.