

Award No. 11156

Docket No. TE-8947

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**UNION PACIFIC RAILROAD COMPANY
(NORTHWESTERN DISTRICT)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (South Central & Northwestern Districts), that:

1. Carrier violated the agreement when on August 1, 8, 15, 22, 29; September 12 and 26, 1955, it caused, required or permitted section foremen (not covered by Telegraphers' Agreement) at Moscow, Idaho, to handle (receive, copy and deliver) train lineups at a time when Telegrapher-Clerk E. H. Sherfey, entitled to perform such work, was not on duty but was available for call.
2. Carrier shall compensate E. H. Sherfey for one call (two hours at time and one-half rate) for each and every day the agreement was violated as above set forth.
3. That joint check of Carrier's records shall be made to determine violations if any occurred subsequent to September 26, 1955, and, if any be found, the amount and name of employee entitled to such compensation.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between Union Pacific Railroad Company (South Central and Northwestern Districts), hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective January 1, 1952 and is by reference made a part of this submission.

This dispute was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes. It involves interpretation of collective bargaining agreement and is under the provisions of the Railway Labor Act, as amended, referable to this Board for award.

to secure the line-up initially from the train dispatcher. Once the telegrapher has received it, however, the practice has been for the telegrapher to transmit the line-up by telephone to section foremen at points where telegraphers are either not employed or are not on duty.

Even if it could be held that the Carrier's instructions were breached as a result of the procedure followed in this case, (and again we say that there was no transgression of the instructions) the claim here would not, in the event of such a disclosure, be valid.

It has been held that except to the extent a carrier may have surrendered its right through the processes of collective bargaining, it is free to carry on its operations in a manner as it may see fit. Consequently, since the Organization was not a party to the instructions, the Carrier was certainly at liberty to change them or to "breach" them for that matter without penalty so long as the "breach" did not violate provisions of the bargaining agreement.

Hence, even if the question of instructions was a material one, the fact of the matter is that there was no violation of the existing instructions nor was there a departure from the practice followed. The instructions only call for the Telegrapher to obtain the line-up from the train dispatcher and that was done in this case. The practice has been, and it was followed here, for the section foreman at points where there are no telegraphers or where the telegraphers are not on duty to secure the line-up from the telegrapher. Such a procedure does not violate the agreement.

The Organization has cited no rule in the agreement, nor is there a rule reserving the work involved to telegraphers. The petitioners' sole reliance is on the scope rule of the agreement, but this Division has repeatedly rejected the contention of the Organization and has held **that it is not a violation of the telegraphers' scope rule for section foremen to obtain line-ups from a telegrapher.**

The claim is, accordingly, without merit and should be denied.

All data used in this Response to Notice of Ex Parte Submission are of record in correspondence and/or have been discussed in conference with the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is made here on behalf of Telegrapher-Clerk at Moscow, Idaho, for compensation, for definite dates, as set out in paragraph 1, of the claim, for an alleged violation of the Agreement between the parties, when Carrier permitted a section foreman at Moscow, Idaho, to receive train line-ups, from the operator at Colfax. In support of the claim, the Claimant not being on duty at the time the line-ups were received, was available for duty and entitled to be compensated for a call, for each date the line-ups were received, at the time and one-half rate for 2 hours.

As to paragraphs 1 and 2 of the claim as made here, it is not denied that the Claimant was the regularly assigned Telegrapher-Clerk at Moscow. That on Monday, Tuesday, Wednesday, Thursday, and Friday, among his regular assigned duties, are to furnish copies of train line-ups

to the Section Foreman. On Mondays, on the dates enumerated in Paragraph 1 of the Claim, are regular assigned rest days for the telegrapher at Moscow, although he is available to perform telegraph service which may be required. Sunday is also a rest day for the incumbent telegrapher, and it appears the incumbent performs some service as a part of his regular rest day relief assignment.

The parties have cited numerous Awards to support their contentions as to the subject matter here, and it is noted that many of the citations are not applicable to the facts before us here.

Without writing a lengthy discussion of the history of the many awards on the subject before us, we are of the opinion that this Division has expressed itself, in many cases applicable to the facts here before us. See Awards No. 10835, 9998, 4919, 4516, and many others, and we hold here that Carrier did violate the Agreement before us, when it permitted the Section Foreman to receive lineups of trains from an operator at a distant station, when the regular operator, while not on immediate duty, was not called although available at the time the line-ups were received.

It will be noted also, that the letter written by E. J. Connors, a Carrier executive to F. C. Paulson, was not in the nature of an agreement, but it was an expression of Carrier's views in reference to Award 604, of this Division. Such letter, was given no consideration in determining the issues here before us, in view of the provisions of Rule No. 70, of the Agreement here before us, which effective January 1, 1952, **supersedes all previous agreements and all interpretations, etc.** The Organization here relied strongly on the letter of E. J. Connors, to support its contentions here.

In reference to Paragraph 3 of the Claim before us, we find that such claim in reference to other named employees, is too vague, indefinite and uncertain, to constitute a claim on behalf of unnamed Claimants, nor is the claim as stated sufficient to entitle the named Claimant to a continuing award against this Carrier. This Division has no authority to require Carrier to check its records to enable the Organization to seek information favorable to it, in order that unnamed employees may make claims against Carrier. Such request as made here is highly improper, and the request should be dismissed. See Awards 9343 and 10435.

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

Carrier did violate the Agreement as to Claim — Paragraph 1 and

Carrier did violate the Agreement as to Claim — Paragraph 1 and 2.

Carrier did not violate the Agreement as to Claim — Paragraph 3.

AWARD

Claim sustained in part, and dismissed in part, in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1963.

**CARRIER MEMBERS' DISSENT TO AWARD 11156,
DOCKET TE-8947**

That portion of this Award which holds that the Agreement was violated and Awards 10835, 9998, 4919 and 4516 which are cited as the basis for finding a violation of the Agreement are all erroneous — see the dissent of Carrier Members to Award 9998.

This Award is also erroneous in that the majority have failed to properly appraise the evidence of record with respect to practice. Although there was sharp conflict in the contentions of the parties and while Carrier's evidence as to practice may not have been as complete as possible, we believe the record as a whole establishes that the action taken in this case was consistent with a past practice which should have been recognized as controlling.

We dissent.

G. L. Naylor
W. M. Roberts
R. E. Black
R. A. DeRossett
W. F. Euker