

Award No. 11399

Docket No. TE-9644

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Northern Pacific Railway Company, that:

1. Carrier violated Agreement between the parties hereto when, on July 1, 1956, it caused, required or permitted Section Foreman to receive (by use of telephone) train lineups Nos. 1, 2 and 3 at Perma, Montana.
2. Carrier violated Agreement when on July 5, 1956, it caused, required or permitted Section Foreman to receive and copy (by use of telephone) train lineup No. 1 at Perma, Montana.
3. Carrier violated Agreement when on July 28, 1956, it caused, required or permitted Section Foreman to receive and copy (by use of telephone) train lineup No. 1 at Perma, Montana.
4. Carrier violated Agreement when on July 29, 1956, it caused, required or permitted Section Foreman to receive and copy (by use of telephone) train lineup No. 5 at Perma, Montana.
5. Carrier violated Agreement when on October 15, 1956, it caused, required or permitted Track Supervisor Lechner to receive (by use of telephone) train lineup No. 9 at Perma, Montana.
6. Carrier violated Agreement when on August 4, 1956, it caused, required or permitted Signal Maintainer Brown to receive and copy (by use of telephone) train lineup No. 1 at St. Regis, Montana.
7. Carrier violated the Agreement when on August 21, 1956, it caused, required or permitted Signal Maintainer Brown to receive and copy (by use of telephone) train lineup No. 1 at St. Regis, Montana.
8. Carrier violated the Agreement when on August 22, 1956, it caused, required or permitted Section Foreman to receive and copy (by use of telephone) train lineup No. 1 at St. Regis, Montana.
9. Carrier violated Agreement when on November 13, 1956, it caused, required or permitted Signal Maintainer Brown to receive and copy (by use of telephone) train lineup No. 1 at St. Regis, Montana.

10. Carrier shall be required to compensate K. E. Branstetter, Agent-Telegrapher, Perma, Montana, for calls as follows:

July 1, 1956 (paragraph 1) 3 calls
July 5, 1956 (paragraph 2) 1 call
July 28, 1956 (paragraph 3) 2 calls
July 29, 1956 (paragraph 4) 1 call
Oct. 15, 1956 (paragraph 5) 1 call

11. Carrier shall be required to compensate R. G. Drew, Agent-Telegrapher, St. Regis, Montana, for one call on dates as follows: August 4, 21, 22; November 13, 1956, for violations as set forth in paragraphs 6, 7, 8 and 9.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement entered into by and between the Northern Pacific Railway Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement is on file with this Division and is by reference made a part of this submission as though set out herein word for word.

The disputes submitted herein were handled separately on the property in the usual manner through the highest officer designated by Management to handle such disputes and failed of adjustment. The disputes are, under the provisions of the Railway Labor Act amended, submitted to this Division for award.

The nine separate disputes submitted herein involve the same substantive claim. It is the position of Employees that the Board has determined the substantive claim in Awards 7344 and 7345, and fixed the quantum of compensation to be allowed for such violations of the Agreement. We shall further discuss these awards in the Position of Employees.

The diversion of work involved is that of copying train lineups by section foremen at Perma, Montana and St. Regis, Montana. The claims submitted involve violations on five separate dates at Perma, Montana and four separate dates at St. Regis, Montana. We shall refer to the separate disputes by Case Number, corresponding to the paragraph number of the Statement of Claim.

CASE NO. 1
(Paragraph 1, Statement of Claim)

K. E. Branstetter, the claimant, as set forth in paragraph 10 of the Statement of Claim, was at all times hereinafter mentioned, the regular assigned Agent-Telegrapher at Perma, Montana. The regular assigned hours are 8:00 A. M. to 5:00 P. M. with one hour for meals. Mr. Branstetter is the only employee at this point covered by the Telegraphers' Agreement. The assigned work days of the position of Agent-Telegrapher at Perma are Monday through Friday and the assigned rest days are Saturday and Sunday of each week.

July 1, 1956 was a Sunday, one of the regular assigned rest days of the claimant. At 2:05 A. M., Section Foreman Kellison at Perma, by the use of the telephone, copied train line up No. 1 (O.R.T. Exhibit 1). 2:05 A. M., of course, is outside of the regular assigned hours of the claimant but he was subject to call and was available for service.

This Division in its awards has established the penalty for improperly removing work from the scope of an agreement as payment at pro rata rate for the amount of work lost measured in terms of hours. See Awards Nos. 6199, 6200 and 6314 of this Division. Therefore, a claim for payment at punitive rates for work which it is alleged to have been lost cannot be sustained.

To sustain the Employees' contention in this docket would be tantamount to directing that at an open station the telegrapher be called to come on duty for the purpose of telephoning the telegrapher employed at the adjacent station and secure information in connection with train movements and then relaying information received to the operator of the track motor car. At a blind siding, the Carrier would be required to employ a telegrapher. The only function that the telegrapher at an open station or at a blind siding would perform would be to telephone the telegrapher employed at the adjacent station and relay the information received to the operator of the track motor car. The rules of the Telegraphers' Agreement never contemplated an operation as unrealistic as would flow from an award sustaining the claim of Messrs. Branstetter and Drew.

The Carrier has shown that the operator of the track motor car did not usurp work included within the scope of the Telegraphers' Agreement when he secured a train line-up over the telephone from a telegrapher employed and on duty at an adjacent station while working at Perma, St. Regis and Knowles; that traditionally, operators of track motor cars have always secured train line-ups from telegraphers employed at adjacent stations when working at a station where a telegrapher was employed but not on duty or when working at a blind siding; and that this traditional practice has not been abrogated or modified by the Telegraphers' Agreement effective April 1, 1956. The Carrier has also shown that the penalty for time lost is payment at pro rata rate rather than at punitive rate. Accordingly, this claim should be denied in its entirety.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employees, and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The claims involved in this dispute are made on the basis that other than employees covered by the Telegraphers' Agreement copied train line-ups.

This question has been decided between the same parties in Awards 7344, 7345, 9998, 10835 and 11228. We believe these awards to be controlling.

For the foregoing reason we find the Agreement was violated.

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 violated.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

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