

Award No. 11400

Docket No. TE-9617

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, that:

1. Carrier violated agreement between the parties hereto when on July 7, 1956, it caused, required or permitted track supervisor P. H. Linker to receive and copy (by use of telephone) at 8:12 A. M. train lineup No. 4 at Elliston, Montana.

2. Carrier violated agreement when on September 10 and 11, 1956, it caused, required or permitted extra gang foreman Mackie to receive and copy (by use of telephone) at 7:00 A. M. (each date) train lineups 2 and 1 respectively, at Elliston, Montana.

3. Carrier violated agreement when on September 12, 1956, it caused, required or permitted extra gang foreman Mackie to receive and copy (by use of telephone) at 6:50 A. M. train lineup No. 1 at Elliston, Montana.

4. Carrier violated agreement when on September 13, 14, 18, 1956, it caused, required or permitted extra gang foreman Mackie to receive and copy (by use of telephone) at 7:13 A. M.; 6:58 A. M.; 6:55 A. M.; respectively, train lineups Nos. 2, 2 and 1, respectively, at Elliston, Montana.

5. Carrier violated agreement when on September 17, 1956, it caused, required or permitted extra gang foreman Mackie to receive and copy (by use of telephone) at 7:25 A. M. train lineup No. 2 at Elliston, Montana.

6. Carrier violated agreement when on September 20, 1956, it caused, required or permitted extra gang foreman Mackie to receive and copy (by use of telephone) at 6:55 A. M. train lineup No. 2 at Elliston, Montana.

7. Carrier violated agreement when on September 21, 1956, it caused, required or permitted extra gang foreman Mackie to receive

and copy (by use of telephone) at 7:15 A.M. train lineup No. 2 at Elliston, Montana.

8. Carrier violated agreement when on September 24, 1956, it caused, required or permitted extra gang foreman Mackie to receive and copy (by use of telephone) at 7:13 A.M. train lineup No. 2 at Elliston, Montana.

9. Carrier violated agreement when on September 25, 1956, it caused, required or permitted extra gang foreman Mackie to receive and copy (by use of telephone) at 7:10 A.M. train lineup No. 2 at Elliston, Montana.

10. Carrier violated agreement when on September 27, 1956, it caused, required or permitted extra gang foreman Mackie to receive and copy (by use of telephone) at 7:50 A.M. train lineup No. 2 at Elliston, Montana.

11. Carrier violated agreement when on September 28, 1956, it caused, required or permitted extra gang foreman Mackie to receive and copy (by use of telephone) at 7:50 A.M. train lineup No. 2 at Elliston, Montana.

12. Carrier shall be required to pay L. M. Vick, regular assigned agent-telegrapher, Elliston, Montana, who was ready, willing and available and entitled under the agreement, to perform such services, for one call (two hours at time and one-half regular rate) agent-telegrapher position, Elliston, Montana, for each violation on July 7; September 10, 11, 12, 13, 14, 17, 18, 20, 21, 24, 25, 27, 28, 1956, as set forth in paragraphs 1 to 11, inclusive.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement 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 forth herein word for word.

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

The disputes submitted herein involve the same substantive claim and the same claimant as was involved in Award 7345 of this Division. Employees performing work belonging to the claimant are of the same class or craft as was involved in the foregoing award, and performed exactly the same work. It is the position of Employees that the Board has determined the issue involved in the substantive claim and fixed the quantum of compensation to be allowed for such violations of the agreement. It was the position of the Management in handling the claims on the property that there is a distinction between these disputes and the one submitted to this Division resulting in Award 7345, but as Employees will hereinafter show, the attempted distinction by the Management is not valid.

We shall set forth the various claims as same were handled on the property, giving a case number for each paragraph of the Statement of Claim involving substantive violations.

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 Employee, 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.