

Award No. 11401

Docket No. TE-10491

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Wabash Railroad, that:

(1) The Carrier violated the parties' Agreement when on the 16th day of April 1957, at Bement, Illinois, it permitted or required a Track Supervisor, an employe not covered by the Agreement, to transmit a message over the telephone to 'XD' Relay Office, Decatur, Illinois, outside the assigned hours of the Agent-Telegrapher at this one-man station.

(2) The Carrier shall, because of the violation set forth above, compensate R. Noblitt, regularly assigned Relief Agent-Telegrapher at Bement, Illinois, a minimum call as provided by Rule 5 of the parties' Agreement.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective September 1, 1955, as amended.

At page 28 of this Agreement are listed the positions in existence at Bement, Illinois, on the effective date of said Agreement. They are:

| Location | Title | Rate per hour |
|-----------------|---------------|----------------------|
| Bement | ATL | \$2.121½ |
| | 2nd TL | 1.90½ |
| | 3rd TL | 1.90½ |

The rates of the positions have since been increased as a result of collective bargaining, and in accordance with the cost-of-living adjustment Agreement of November 1, 1956.

On or about December, 1956, pursuant to the installation of Centralized Traffic Control through the Bement territory, the second and third shift telegrapher-leverman positions were abolished.

It will be further noted that with the exception of the following being added to paragraph (d):

"except as specifically provided in Rule 7"

Rule 1 (scope rule) as contained in the Telegraphers' Agreement effective September 1, 1955, is the same as Rule 1 contained in the Telegraphers' Agreement effective November 1, 1946.

The Committee, having failed to gain a rule in the agreement effective November 1, 1946 prohibiting employees other than telegraphers from receiving or forwarding messages or reports of record by telegraph, telephone or mechanical telegraph machines, and not having secured such provision in the agreement to date, is without support for its contention that the agreement was violated when the Carrier "required or permitted track supervisor E. E. Schall, Bement, Illinois, an employee not covered by the telegraphers' agreement to perform the work of transmitting communications of record by telephone, at Bement, Illinois, * * *" as the Carrier did not agree to the inclusion of provisions in the agreement which necessarily would have to be there in order to support the Committee's contention of a violation in this case.

The claims should be denied.

The Carrier affirmatively states that the substance of all matters referred to herein has been the subject of correspondence or discussion in conference between the representatives of the parties to this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: On or about December, 1956, pursuant to the installation of Centralized Traffic Control through the Bement territory, the second and third shift telegrapher-leverman positions at Bement, Illinois, were abolished. The one remaining position at Bement is that of Agent-Telegrapher, occupied on the relief days of the position by Relief Agent-Telegrapher R. Noblitt, Claimant in this matter before the Board. The position is assigned 6:50 A. M. to 3:50 P. M., workdays Tuesday through Saturday, Sunday and Monday rest days.

On Monday, April 15, 1957, at 6:03 P. M., Track Supervisor E. E. Schall transmitted the following message over the telephone from his office at the Station at Bement to "XD" office at Decatur, Illinois, from which the operator in "XD" office then prepared the following message to division officers:

"Bement April 15 1957

"JNS
JCJ
MWH
JMC

"DECATUR

"CALL WORK TRAIN AT DECATUR APRIL 16 1957 FOR 530AM BRING OUT OF DECATUR 17 CARS SLAG BALLAST NOW ON TRACK NO. 8 WESTBOUND YARDS PICK UP AT BEMENT SOO 6489 CWC 5189 AND GMO 49979 NOW ON TRACK NO 1 BEMENT AND WORK BETWEEN LODGE AND GIBSON CITY UNLOADING BALLAST TIE UP AT BRUSH.

"EES

"605PM"

The officials to whom the message was addressed were:

"J. N. Sailor—then Superintendent of the Decatur Division,

J. C. Johnson—Chief Train Dipatcher of the Decatur Division,
now retired,

M. W. Hollenbeck—then Trainmaster of the Decatur Division,

J. W. McLaughlin—Division Engineer."

It is the contention of the Claimant that the foregoing message transmitted by the Track Supervisor over the telephone from his office at Bement to the "XD" operator at Decatur was a communication of record concerning transportation or the movement of trains and thereby deprived Claimant Telegrapher of work to which he was entitled under the existing agreement between the parties.

Carrier maintains that the subject matter of the conversation from which the telegrapher in "XD" office prepared the message was that of arranging for a work train and is such as a Track Supervisor may impart to his Superiors verbally, by telephone or by Company mail or messenger as well as by wire, depending on the circumstances; that in this particular case he was occupied by other matters until after office hours for his superiors and rather than attempt to locate them, he had the telegrapher in "XD" office at Decatur prepare the message complained of.

The pertinent Rules of the Agreement involved in this controversy is Rule 1 (the Scope Rule), as follows:

"RULE 1

"TELEGRAPHER DEFINED

"(a) Following rules and rates of pay shall apply to all telegraphers, telephone operators, agents, agent-telegraphers, agent-telephoners, towermen, levermen, block operators and car distributors, whose positions are shown in the sub-joined wage scale, who shall hereinafter be considered as employees covered by this agreement.

"(b) All employees herein specified shall be paid on an hourly basis, except those shown on monthly basis.

"(c) No employe other than those (not including non-telegraph agents or exclusive levermen) covered by this agreement and train dispatchers will be permitted to handle train orders except that in an emergency conductors may copy a train order from the train dispatcher and if there be a telegrapher employed at the point where the conductor copied the train order he (the telegrapher) will be paid a call (three (3) hours at pro rata hourly rate). If there is no telegrapher employed at the point where the conductor copied the train order the telegrapher employed at the nearest station will be paid a call (three (3) hours at pro rata hourly rate). * * *

It is the contention of the Carrier in the instant case that the subject matter of the conversation with the telegrapher in "XD" office was that of a work train. Under (c) of the Rule it is indicated that no other than those covered by the Agreement will be permitted to handle train orders. In Award 10700—Hall, we considered messages similar to the one under consideration here. An examination of the message in the instant case does not indicate it was of a nature to control the operation or movement of trains.

However, Claimant contends that under the general Scope Rule that a part of the work of a telegrapher is transmitting reports or communications of record (of which the instant message is an example) by telephone in lieu of telegraph; that historically and traditionally by custom and practice telegraphers have always performed this type of work.

In contradiction of this contention, the Carrier insists that information such as was conveyed in this telephone call has been the subject of telephone conversations between employees, Supervisors and others, daily, since the telephone came into general use.

There is no consistency in the Awards of this Board as to what constitutes "messages or communications of record". The facts and circumstances vary in each case.

As was enumerated in Award 9953 — La Driere: "As to whether the message was a communication of record it is well to remember that the use of the telephone is not reserved exclusively to telegraphers or any other craft. Award 5182 — Boyd, 6703 — Donaldson, 9343 — Begley and the fact that the substance of a telephone conversation is reduced to writing does not make it a communication of record. * * *"

Under Scope Rules, similar to the one we have here, there are many Awards of this Board to the effect that the Claimant's right to the work which he contends belongs exclusively to him must be resolved from consideration of tradition, historical practice and custom and the burden rests upon the Claimant to prove his case.

On this subject very little help has been given to us by either party beyond general statements in the Record.

Under all the circumstances of this case it is our conclusion that the message in question was not a train order and that within the purview of the Scope Rule Claimant has failed to establish by a preponderance of the evidence that he was entitled to perform the work in question to the exclusion of others either through custom, practice or tradition.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1963.