

Award No. 11699
Docket No. TE-10532

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-San Francisco Railway, that:

1. Carrier violated the Telegraphers' Agreement when on June 6, 1957, 4:53 P.M., it permitted the Chief Dispatcher at Chaffee, Missouri, who is not a party to our Agreement, to call the Telegrapher at Turrell, Arkansas on the No. 2 phone and transmit a message which was a communication of record.

2. Carrier violated the Telegraphers' Schedule when on June 18, 1957, 4:30 P.M., it permitted Mr. E. C. Reeve, Chief Dispatcher, Chaffee, Missouri, who is not covered by the schedule, to use the Dispatcher's phone to transmit a two copy message addressed to C&E Extra 111 South, Sikeston, Missouri, to Mr. P. H. Hunott, telegraphers, Sikeston, Missouri for delivery.

3. Carrier violated the Telegraphers' Schedule when on June 21, 1957, 4:40 P.M., it permitted the Chief Dispatcher, Chaffee, Missouri, voluntarily participate in a violation of the Telegraphers' Agreement by accepting a message from the Agent, Gravois, Missouri, which was a communication of record and a "need for or requirement of" same.

4. Because of such violation Carrier shall compensate C. A. Job, Manager-Telegrapher, first shift, Chaffee, Missouri, for three hours at the pro rata rate of his assigned position, for each of the dates above listed.

EMPLOYES' STATEMENT OF FACTS: Chaffee, Missouri is situated midway between St. Louis, Missouri and Memphis, Tennessee. Carrier maintains its River Division headquarters at this point under the jurisdiction of a superintendent. Its train dispatching and telegraph offices are located in the same building housing the superintendent's staff.

The prevailing Telegrapher's Agreement between the parties revised effective May 16, 1953 contains the Wage Scale listing of the following positions covered by the Agreement at Chaffee:

that Employees have failed to meet such burden in their handling with the Carrier on the property. On June 6, 1957, Carrier's Chief Dispatcher simply talked to the telegrapher at Turrell over the telephone, and as a result of this conversation with the Chief Dispatcher, the telegrapher at Turrell originated a message which he handed up to the crew on Train 836 as it passed through Turrell. While Carrier submits that it would not have been a violation of the Agreement for the Chief Dispatcher to have given the telegrapher at Turrell a direct message, the facts are that he simply advised the telegrapher at Turrell of the need for the brakeman at Hayti and instructed him to give this brakeman a message accordingly. The message did not come into existence until the telegrapher at Turrell prepared it as a result of his conversation with the Chief Dispatcher, and the telegrapher performed all work in connection with the preparation of the message to the brakeman and delivery of such message to train 836 when it passed through Turrell. On June 18, 1957, the message which the Chief Dispatcher gave to the telegrapher at Sikeston was directly in connection with the movement of Train Extra 111 South, and though Carrier does not agree with contention of the Organization that the exception contained in Article I of the Telegraphers' Agreement is limited to the handling of messages by the train dispatchers and chief dispatcher "in connection with the movement of trains", the message on June 18, 1957 was not in violation of Article I of the Telegraphers' Agreement on the basis of the admitted understanding of the General Chairman of such rule (Exhibit B-7). The claim on June 21, 1957 involves the Agent-telegrapher at Gravois calling and talking to the Chief Dispatcher, and on this basis Employees' Statement of claim alleges that Carrier permitted the Chief Dispatcher at Chaffee to "voluntarily participate in a violation of the Telegraphers' Agreement by accepting a message from the Agent, Gravois, Missouri. . . ." The picking up of the cars at Gravois involved or was "in connection with the movement of trains" and, by the General Chairman's own admission, such handling by the chief dispatcher came within the exception contained in Article I of the Telegraphers' Schedule according to his "understanding" of the Rule (Exhibit B-7).

For any and all reasons fully outlined herein, claim of Employees is without merit or agreement support, and Carrier respectfully requests this Board to so find and to deny such claim in its entirety.

All data submitted in support of Carrier's position have been presented to the Employees or duly authorized representative thereof and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that for many years prior to June, 1957 the station at Chaffee, Missouri had a 24 hour telegrapher service. One shift was eliminated between the hours of 1:00 P. M. to 9:00 P. M. It was during these hours, approximately before 5:00 P. M. in the month of June, that on three occasions messages were handled by the chief dispatcher. Claim is made that the Carrier violated the Scope Rule, Article I(1) which reads as follows:

"ARTICLE I

(1) Employees, except train dispatchers, who are required by direction of officer in charge to handle train orders, block or report trains, receive or forward written messages by telegraph, telephone or mechanical telegraph machines, (defined as telegraphers, telephone operators, block operators, operators of mechanical telegraph machines,

agent - telegraphers, agent - telephoners) agents, assistant agents, ticket agents, assistant ticket agents and car distributors, listed in appended wage scale, also tower and train directors, towermen, levermen, staffmen, are covered by this Agreement and are hereinafter collectively referred to as employees, and when so referred to all are included."

Claimant maintains that the Scope Rule exception "train dispatcher" does not extend to and include chief dispatcher. Carrier counters with the assertion that the chief dispatcher is included within the generic term "train dispatcher". It supports its position with the argument that chief dispatcher performed the work of handling messages in the past and that this work is incidental to his duties.

We have given consideration to these and other contentions raised by both parties, but we regard as most fundamental the question of whether Scope Rule permits the chief dispatcher to be classified in the category of the exception train dispatcher. Where there is a clearly expressed exception stated in the Agreement, there is no valid reason to imply or assume other exceptions. To include the chief dispatcher as a train dispatcher would strain the Agreement and add another exception not stated. We note that other Agreements of the parties differentiate between a chief dispatcher and a train dispatcher; and we believe that if the parties desired another exception in the Scope Rule, they would have provided for it in the Agreement. Carrier's point that the car distributor, a member of the telegrapher's group, was available for service while the chief dispatcher handled the messages, is not a persuasive argument. The handling of the messages by the Chief dispatcher occurred during the period when the telegrapher would have worked if he were not eliminated. Car distributors' normal duties are other than handling messages and these employees are usually available along with telegraphers. In the absence of a regular telegrapher we cannot accept Carrier's contention that the handling of these three messages was only incidental to the duties of the chief dispatcher. It is clear that the chief dispatcher performed the duties of a train dispatcher. Since the Agreement was not changed and specifically mentions but one exception, it does not permit Carrier to include chief dispatcher as another exception.

We hold, therefore, that Carrier violated the Agreement.

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 violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of August 1963.