

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY—EASTERN LINES**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway; that

1. The Carrier violated the agreement between the parties when, on July 6, 1957, it required or permitted an employe at Norborne, Missouri, not covered by said agreement, to obtain by means of a telephone and deliver a line-up to a train at Norborne; and
2. The Carrier shall now be required to pay R. H. Robinson, Agent-Telegrapher at Norborne, the equivalent of three hours pay at the rate applicable to his position.

EMPLOYES' STATEMENT OF FACTS: An agreement between the parties, bearing effective date of June 1, 1951, is in evidence. At page 64 of said agreement the position of agent-telegrapher at Norborne is listed.

R. H. Robinson is regularly assigned to the position of agent-telegrapher at Norborne, Missouri with an assigned work week of Monday through Friday with Saturdays and Sundays as assigned rest days. His assigned hours are 6:45 A. M. to 2:45 P. M. The position is not normally filled on Saturdays or Sundays.

There is also a clerk, an employe not covered by the Telegraphers' Agreement, employed at Norborne. This position is assigned to work on Saturdays when the agent-telegrapher is absent on his rest day.

At 3:35 P. M., July 6, 1957, the clerk on duty at Norborne, who is not covered by the Telegraphers' Agreement, contacted the telegraph service employe on duty at Hardin, Missouri, located 8.8 miles west of Norborne, by means of a telephone, copied a line-up of westbound trains and delivered said line-up to the conductor of Extra 2603, then at Norborne. This is work normally performed by the Agent-Telegrapher.

titled to use the telephone in connection with the movement of trains is in effect. Without belaboring the question, the communication of information that a train includes two cars without waybills does not appear to involve the movement of trains under the evidence adduced in the present record."

In the handling of this dispute on the property the only issue in the case that was raised by the Employees is the alleged violation of Article I "Scope"; Article II, Section 5; and Article XX of the Telegraphers' Agreement effective June 1, 1951, brought about by the complained-of telephone conversation relating to the probable arrival time of other trains.

As the Carrier has shown herein, the Employees' contention that Article I and Section 5 of Article II had been violated is obviously without merit. Concerning Article XX, since the Employees failed to identify the particular section or sections thereof that were allegedly violated, comment by the Carrier has been withheld. However, it is difficult to understand how this Article XX could be in violation in that it deals only with seniority and promotion in road division offices, which is not the issue here.

On the other hand, it is equally obvious that as the Carrier has pointed out, telephone conversations such as the one complained of in this dispute are permitted without penalty to the Carrier under the provisions of Article XIII, Section 3(a) of the Telegraphers' Agreement, effective June 1, 1951.

Therefore, in conclusion, the Carrier again asserts that:

(1) Neither Article I, the so-called "Scope" rule; Article II, Section 5; nor Article XX of the Telegraphers' Agreement effective June 1, 1951, cited by the Employees as supporting the claim, are in violation as a result of the complained-of telephone conversation.

(2) The complained-of handling, i.e., the securing of information by Company telephone concerning the probable arrival time of other trains without penalty to the Carrier is specifically permitted under provisions of Article XIII, Section 3(a) of the Telegraphers' Agreement effective June 1, 1951.

and for these reasons respectfully submits that the Employees' claim in the instant dispute is entirely without merit and/or Agreement support and should either be dismissed or denied in its entirety.

The Carrier is uninformed as to the arguments the Organization will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence or argument as it may conclude are necessary in reply to the Organization's ex parte submission or any subsequent oral arguments or briefs the Petitioner may submit to the Board in this dispute.

All that is contained herein is either known or available to the Employees and their representatives.

OPINION OF BOARD: The facts not in dispute are that on Saturday, July 6, 1957 (rest day of the agent-telegrapher who was not on duty), an extra freight train No. 2603 arrived at Norborne, Missouri. The Conductor wanted to switch some cars, but first wanted to find out when a certain Westbound train would arrive at Norborne. He tried to telephone the Operator at Hardin, Missouri, but failed to contact him. Later in the day the Clerk on duty at

Norborne telephoned the Operator at Hardin and obtained the following information as to the arrival of Westbound trains:

“Second 7 WB Jct. 3:35 P. M.

Wabash West Norborne 3:50 P. M.

Extra 114 West Norborne 4:50 P. M.”

The Clerk copied the information as he obtained it by telephone and gave the copy to the Conductor of the extra 2603.

Rules or parts thereof involved here are as follows:

“ARTICLE I

“Scope

“Section 1. This Agreement governs the wages, working conditions and compensation of employes on positions of:

“Agents listed in wage scale

Ticket Agents listed in wage scale

Agent Telegraphers

Agent Telephoners

Agents (small non-telegraph or non-telephone)

Managers listed in wage scale

Manager-Wire Chiefs

Wire Chiefs, Assistant Wire Chiefs, Traffic Chiefs

Telegraphers

Telephoners (not including telephone switchboard operators)

Block Operators

Tower and Train Directors

Towermen

Levermen

Staffmen

Car Distributors listed in wage scale

Drawbridgetenders (levermen) listed in wage scale,

and such other positions as may be shown in the appended wage scale or which may hereafter be added thereto.”

However, this dispute involves far more than the Scope Rule. It involves, and, in our opinion, turns on the interpretation of Article XIII, Section 3 (a) and because later reference is made thereto prior sections of the article are set forth:

**“ARTICLE XIII
“HANDLING TRAIN ORDERS**

“Section 1. Except as otherwise provided in Sections 2, 3 and 4 of this Article XIII, no employe other than covered by this Agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call.

“Section 2. Train and engine service employes will not be required or permitted to copy train orders or messages of record from train dispatchers for the purpose of advancing the movement of their train or other trains, except in cases of emergencies.

“Emergencies as referred to herein are:

“(a) Storms, washouts, high water;

(b) Wrecks, slides, snow blockades;

(c) Accidents;

(d) Failure of fixed signals or train control;

(e) Engine and equipment failure and break-in-two's; which could not have been foreseen prior to train passing or leaving last open office of communication, and which would result in serious delay to trains.

“(f) Danger to life or property requiring immediate attention.

“Section 3. It is understood that the following procedures are permissible and not in conflict with this Agreement:

“(a) At points where there is no telegrapher or telephoner employed, or where one is employed but not on duty, a telephone conversation about work performed or to be performed, about obtaining permission to cross over from one track to another or to flag block, or about the probable arriving time of other trains; and

“(b) At junction points or points where spur tracks join main tracks where telegraphers or telephoners are not employed, train and engine service employes may obtain telephone check on overdue trains, but train orders or messages of record may not be copied unless an emergency exists as defined herein.

“Section 4. When train orders or messages of record are copied by train and engine service employes at stations where telegraph

service employes are employed, this Article XIII will govern, regardless of whether emergencies as defined herein exist."

We believe the interpretation of Section 3 (a) here depends on the meaning of the words:

"or about the probable arriving time of other trains;"

The Carrier says that the words mean that anybody, any employe, can use the telephone to ascertain the probable arriving time of a train and can do what he pleases with the information received and that even if he does copy it down such does not make it a communication of record and the act of giving it to the Conductor makes no difference because it is not a train line-up.

The Organization says that Section 3 (a) can be used only by "train and engine service employes" and was never meant to extend to any others not parties to the Telegraphers' Agreement.

The parties have indicated this is a new question of first impression not previously passed on by this Board.

An examination of Article XIII and awards that were in existence when it was agreed upon establishes that it was the purpose to reserve to the Telegraphers the work which by tradition and historical practice had belonged to them, Award 10767 (Ables), except where by specific agreement it was otherwise provided.

Keeping in mind the understanding of the parties to the Agreement; who outside the Agreement did they intend could use a telephone and obtain information "about the probable arriving time of other trains;"? "Other trains" is significant. The rule does not say "any trains" or "all trains" but "other trains." There must first be "a train" before there can be "other trains." Consequently, it means that "a train" may ascertain the probable arriving time of "other trains." Thus, train employes of "a train" may call on the telephone about the probable arriving time of other trains. This is supported by the fact that in Section 2 in setting up certain exceptions to the rule "Train and engine service employes" are specifically mentioned and again in Section 3 (b) "train and engine service employes" are specifically set forth likewise in Section 4. While the words "train employes" are not set forth in the sub-Section (a) when we consider the words "other trains" in connection with the whole Section 3 and other sections of the article remembering that the parties contracted in the light of existing awards it cannot be said that the parties intended to make the procedure followed here permissible and not in conflict with the Agreement Award 5133 (Coffey). Nothing anywhere in the Agreement indicates or suggests that it was intended that Clerks could use the phone to obtain information from the Operator about the probable arriving time of other trains, copy it down and deliver it to a Conductor of another train.

Furthermore, Section 3 (a) in reference to telephone conversations says "about obtaining permission to cross over from one track to another." Would a Clerk want to obtain "permission to cross over from one track to another." Only the train employes of such a crossing over train would be "obtaining permission." In Award No. 9261 (Hornbeck) the same Carrier argued that the same rule Section 3 (a) did apply to train or engine service employes. It successfully resisted Telegraphers' claim that train employes had violated the Agreement by telephone conversations between a crew member of an extra

train and the dispatcher regarding the probable arriving time of other trains. Carrier's argument there seems in point here and we quote it.

"Section 3 (a) expressly provides that a telephone conversation between a train or engine service employe and the train dispatcher at points such as those involved in the instant dispute, where there is either no telegrapher or telephoner employed or on duty, '*** about the probable arriving time of other trains' is 'permissible and not in conflict with * * ', viz., not violative of, the Telegraphers' Agreement. The provisions of Article XIII, Section 3 (a) are clear and unambiguous and expressly support the handling complained of."

It would do violence to the intention of the Agreement to read into it the right of a Clerk to exercise or use the exception granted to "train and engine service employes." We cannot rewrite the contract. Award 11513 (Stark), 8676 (Vokoun), 7166 (Carter), 9198 (Weston).

The message was a communication about the arrival time of trains; it was a train line-up, a communication of record.

A failure to record a message or report which should have been made of record would not alter the essential character of the work. Award 5182 (Boyd).

In fact the letters of Carrier's Superintendent R. J. Yost and General Manager, J. N. Landreth did not deny that the message was a train line-up. We quote the latter:

"Topeka, Kansas

September 27, 1957

O-1225-54-2-w

"Mr. A. W. Barraclough
General Chairman, O.R.T.
208 Columbian Building
Topeka, Kansas

"Dear Sir:

"Replying to your letter August 1, 1957, file 21-A-M-857, claim in behalf of R. H. Robinson, Agent-Telegrapher, Norborne, July 6, 1957:

"Our investigation develops that the Conductor on Extra 2603 arrived at Norborne at 3:10 P.M., departed at 4:00 P.M. While at Norborne, he made an effort to contact the Agent-Telegrapher at Norborne over the message phone for the purpose of obtaining a line-up. July 6 was Saturday, the rest day of the Agent-Telegrapher; therefore, a clerk who was on duty at the time, contacted the Operator at Hardin, Missouri, by telephone and obtained the line-up, which he gave to the Conductor.

"Inasmuch as there was no Telegraph Service Employee on duty at Norborne at the time the complained-of telephone conversation was made and the line-up was obtained through the Operator at the nearest open station (Hardin, Missouri) the handling is not considered to

be in violation of the Telegraphers' Agreement. In fact, it is considered that such handling is permissible under the provisions of Article XIII, Section 3 (a) of the Telegraphers' Agreement and the claim is respectfully declined.

"Yours truly,

/s/ J. N. Landreth
General Manager"

Telephone calls made by an employe not covered by the Agreement, concerning the probable arrival time of another train have been held to be messages of record and within the scope of the Agreement. That was Award 10767 (Ables) involving a dispute between these same parties where the same Carrier contended as here that it was merely "conversation." That award applies to the message here.

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 Employes involved in this dispute are respectively Carrier and Employes 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 20th day of September 1963.

CARRIER MEMBERS' DISSENT TO AWARD 11727
DOCKET TE-10499

We dissent.

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