

Award No. 11805
Docket No. TE-10608

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chesapeake and Ohio Railway, that:

1. Carrier violated the Agreement between the parties when beginning on August 27, 1957 and continuing each day thereafter except Saturdays and Sundays through November 11, 1957, it required or permitted employes not covered by the Agreement at Netherland, Kentucky to transmit reports of record.

2. Carrier shall compensate an employe under the Agreement who was improperly deprived of the performance of the work in question, an amount equal to one call payment on each day except Saturdays and Sundays from August 27, 1957 through November 11, 1957.

EMPLOYES' STATEMENT OF FACTS: The Agreements between the parties are available to your Board and by this reference are made a part hereof.

Netherlands, Kentucky is a station on the Carrier's Lexington Subdivision and is essentially a freight yard near Lexington, Kentucky. There is continuous telegraph service at this location, around the clock, seven days per week. There are clerical and other positions at this location not covered by the Telegraphers' Agreement.

Beginning on August 27, 1957 and continuing through November 11, 1957, excepting Saturdays and Sundays, the Carrier required or permitted an employe not covered by the Agreement to transmit from Netherland a car situation report. As an example, the following report was transmitted by Yard Clerk Osborne from the Netherland Yard Office to the Car Distributor's Office in Huntington, West Virginia:

The Carrier submits that the instant case must be settled on its own merits.

CONCLUSIONS

The Carrier has shown that:

1. The work involved was the holding of a daily telephone conversation by the car distributor at Huntington (under Clerks' Agreement) with a clerk in the yard office at Netherland in connection with car supply.
2. Clerical employes have done such work down through the entire development of telephones on the railroad.
3. The Third Division has established and from time to time reaffirmed the position that Telegraphers can claim exclusive right to telephone work only which is theirs traditionally and historically, such as, in connection with the handling of train orders and records in connection with the control and movement of trains.
4. The work involved in the telephone conversation in the instant case in no way involved train operation or control reserved by the Board to Telegraphers.
5. Special Board of Adjustment No. 136 in its awards on telephone cases established distinctions which sustain the position of the Carrier in the instant case.
6. There is no basis under the rules or otherwise for allowance of the claim, and it should be denied in its entirety.

All data contained in this submission have been discussed in conference or by correspondence with the employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts are not in dispute. There is continuous, around the clock, seven days per week telegraph service at the Netherlands, Kentucky station on Carrier's Lexington Subdivision. Telegraphers are covered by an Agreement between the parties. Clerical and other employes working at the Netherlands station are not covered by the Telegraphers' Agreement.

Carrier's car distribution headquarters for the Chesapeake District is at Huntington, West Virginia. That office is supervised by a Chief Car Distributor. Huntington is 138 miles by rail from Lexington, Kentucky.

There was a glass plant at Lexington and Carrier was required to furnish clean cars of specified classifications for that glass plant.

For about four or five years prior to the date of this claim it was the practice of the Car Distributor at Huntington to telephone the Netherlands

Yard Office and discuss the requirements of cars for glass loading. These telephone conversations usually took place between 6:00 A. M. and 7:00 A. M. They took place even though a daily midnight car situation report was transmitted by telegraphers to the Chief Dispatcher for transmission to the General Superintendent of Transportation.

All of such telephone conversations originated in Huntington. The clerk or yardmaster at Netherlands would advise the car distributors at Huntington about the number of cars loaded, the number of cars available for loading, the number of cars cleaned and suitable for loading and the available cars. The car distributor would advise the clerk or yardmaster about plans for moving additional cars into Netherlands.

Petitioner alleges that beginning on August 27, 1957 and continuing through November 11, 1957 an employe not covered by the Telegraphers' Agreement transmitted from Netherlands a car situation report. As an example, Petitioner cites "the following report transmitted by Yard Clerk Osborne from the Netherland Yard Office to the Car Distributor's Office in Huntington, West Virginia:

"5 loads out
4 empties in
4 to be cleaned
5 ordered yesterday."

The Scope Rule of the Agreement does not define nor does it describe the work of the employes covered therein. It simply lists the classes of employes covered. We have consistently held that in the absence of precise definition and description of such work that custom, practice and tradition applies. This involves a question of fact.

Petitioner has not shown by evidence in the record that the transmitting of the information contained in the telephone conversations between August 27, 1957 to and including November 11, 1957, was such work which, because of custom, practice and tradition, belongs exclusively to Telegraphers. On the contrary, the record shows, without denial by Petitioner, that this information was elicited by telephone for four or five years prior to the date of this claim. Petitioner has failed to prove its case by a preponderance of evidence.

Petitioner argues that the messages in question were messages of record and thus could not be communicated by anyone other than an employe covered by the Agreement. These messages did not affect the operation of trains or did they affect the safety of persons or property "which by their very nature should be made of record." Awards 10525 (Carey), 11147 (Rose), 10700 (Hall) and others. The mere fact that a telephone conversation is reduced to writing, although not required, does not constitute a matter of record.

On the basis of all of the evidence in the record, we conclude that there is no merit to the claim.

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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1963.