

Award No. 11885
Docket No. TE-10220

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago and St. Louis Railroad, that:

Claim No. 1

1. Carrier violates and continues to violate the Agreement between the parties when at Rankin, Illinois, it requires or permits employes not covered by the Telegraphers' Agreement to transmit transportation communications over the telephone outside the assigned hours of the agent at this location.

2. Carrier shall, because of the violations set forth above, commencing August 8, 1956 and thereafter so long as the violation continues, compensate the regular occupant of the agent's position at Rankin, or his successor, a minimum call payment for each of such violations in accordance with the provisions of Rule 12, of the Agreement.

Claim No. 2

1. Carrier violated the Agreement between the parties when during the period August 1 to 13 inclusive, 1956 (excluding Saturdays and Sundays) it required or permitted conductor of Work Extra Motor BR-2 at Rankin, Illinois, an employe not covered by the Agreement, to "OS" and transmit other transportation communications and/or reports.

2. Carrier shall, because of the violations set forth above, compensate Relief Agent E. E. Mize a minimum call payment for each day (9) on which said violations occurred in accordance with Rule 12 of the Agreement.

Claim No. 3

1. Carrier violated the Agreement between the parties when at Rankin, Illinois, during the period August 12 to 21, 1956, inclusive, (excluding Saturday and Sunday), it required or permitted a conductor, an employe not covered by the Agreement, on Work Extra Motor M 5-6, to perform the work of a block-operator.

2. Carrier shall, because of the violations set forth above, compensate the agent at Rankin, or his successor, a minimum call payment for each day (7) on which said violations occurred in accordance with Rule 12 of the Agreement.

Claim No. 4

1. Carrier violated the Agreement between the parties when on August 18, 1956 at Rankin, Illinois, it required or permitted an employe not covered by the Telegraphers' Agreement to "OS" and transmit other transportation communications over the telephone outside the assigned hours of the agent at this location.

2. Carrier shall, because of the violations set forth above, compensate the agent at Rankin, Illinois a minimum call payment of two (2) hours in accordance with Rule 12 of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective June 1, 1948, as amended.

Claim No. 1

At page 64 of the effective Agreement is listed:

"Rankin Agent-Opr. Hourly Rate \$1.24"

The rate of the position has been increased as a result of subsequent collective bargaining agreements and now stands at \$2.098 which does not include the cost of living rate adjustment as provided by the Agreement of November 1, 1956.

The Carrier maintains the one position subject to the Agreement at Rankin, with assigned hours 6:30 A. M. until 3:30 P. M. one hour meal period. It is a seven day position. The work-week is Wednesday through Sunday, with Monday and Tuesday rest days. The rest days of the position are represented by a regularly assigned relief employe.

On October 5, 1956, General Chairman Hayes of the Organization instituted claim, his letter of that date addressed to Superintendent Clear the pertinent part of which for the immediate chronology being:

"Yard clerks and train service employes, none of which are covered by the Telegraphers' Agreement, daily transmit information pertaining to the movement of trains, report cars on hand and give destination of same, and other communication work at Rankin, Ill., when the agent is off duty. * * *."

Representative examples of the communications being handled by non-covered employes were included in the complaint filed, which is attached hereto and made a part hereof by ORT Exhibit No. 1.

Superintendent Clear's letter of October 24, 1956 answered the complaint as follows:

"Yours of October 5, 1956 submitting claim on behalf of the agent at Rankin, Illinois for a call each day beginning August 8, 1956 and

"During my employment with this company it has always been a practice of train service employes to have telephone conversation with the dispatcher, from various locations along the railroad, to expedite the movement of their train. These conversations relate to reporting the train cleared, securing permission to occupy the main track, discussing such work as cars to be picked up, set off, etc., and ascertaining locations of other trains which might effect the operation of their own train. Information which is given to the dispatcher from various locations might be in connection with train and crossing accidents, signal failures, engine failures, draft attachment failures, hot journals, etc.

"As a supervisor it has always been the practice to contact the dispatcher, by phone, regarding train accidents or derailments and inform him the condition of same, cars involved, track condition, relief equipment required, and approximate time to clear the main track. They are contacted at other times for information relative to the operation of trains.

"/s/ W. G. Kauffman"

Photostatic copies of the above statements as well as many others of like import (39 in all) are attached as Carrier's Exhibits "V" to "HHH" inclusive. These statements are from Lake Erie and Western District employes and were freely given. Hundreds of similar statements could be obtained, as the facts are not peculiar to any district and are well known to all employes having any experience with the handling of such matters on this railroad.

The Carrier has shown that each of the acts complained of, both separately and collectively, are those that have been performed in the same manner for 40 years or more with no change in the Scope Rule, and that such work is not reserved to telegraphers by the Scope Rule itself or by tradition, historical practice or custom thereunder. The Employes have not and cannot show to the contrary. Clearly these claims are without merit and should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The claims herein are determinable under the same principles as in Docket No. TE-10217, Award No. 11882. We adopt the reasoning therein set forth as determinative of the confronting claims.

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 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 not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.