

Award No. 11895
Docket No. TE-10590

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**JOINT TEXAS DIVISION of Chicago, Rock Island and
Pacific Railroad Company — Fort Worth and Denver Rail-
way Company (Burlington-Rock Island Railroad Company)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Joint Texas Division of Chicago, Rock Island & Pacific Railroad and Ft. Worth & Denver Railway, that:

1. Carrier violates and continues to violate the Agreement between the parties when it requires or permits employes not covered by the Agreement to receive and copy train lineups at Onion Creek, Corsicana, Donie, Iola, Richards, Dolbin and Rosslyn (all in Texas), Mondays through Fridays of each week.

2. Carrier shall compensate the senior idle telegraphers, extra in preference, in the amount of a day's pay of eight hours on each date the violation occurs at each location beginning March 1, 1957 and continuing thereafter until the violation is corrected.

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

This claim is primarily based on violation of the Scope Rule of the Agreement because of employes not covered by the Agreement, section foreman, signal maintainers, etc., receiving and copying train lineups at stations where no telegraphers are presently employed. The lineup on trains is in connection with their operation of track motor cars. A similar claim involving violations at stations where telegraphers are employed, but off duty at the time of the violation, is now before your Board in a separate proceeding, identified as Docket TE-9744.

This Carrier has said that starting with the year 1921, track motor car operators were required to secure a lineup on train movements before placing their motor cars on the main track. However, even before this became a requirement, by Carrier rules or instructions, track motor car operators did from time to time secure such lineups on train movements as a matter of safety. All

(6) That in revising Rule 26, Non-Telegraph Agents, telephone service was removed from the provision of the proposed rule that would have given the telegraphers the exclusive right to perform telephone service. Obviously, when the Organization withdrew its proposal to include "or telephone" in Rule 26, then all of the work of non-telegraph agents performing telephone service left its control, and thereafter was not within the scope of the agreement with the telegraphers.

(7) In the revision of Rule 33, Handling Train Orders, that part of the rule proposed by the Employees in negotiating the current agreement effective June 15, 1956 which would reserve to the telegraphers the exclusive right to handle "All communications by telegraph or telephone pertaining to train or train movements . . ." was rejected by the Carrier, and they have no contractual basis for these claims. Even if motor car line-ups, which confer no right or authority, should be classed as an "order of record," the Board still could not hold, by reason of the "Handling Train Orders" rule the Petitioner was unable to obtain in negotiation, that employees represented by the Petitioning Organization have the exclusive right to handle motor car line-ups. To do so would be in fact giving them a rule which they could not obtain in negotiation, and which the Board has no authority to do.

It is requested that the Board follow precedent, and dismiss this claim by reason of Petitioner's failure to comply with Rule 35 (a). If not, it must be recognized that this claim is entirely without contractual rule support, and, accordingly, decline it.

Carrier affirmatively states that all data herein and herewith submitted have previously been submitted to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The question presented by the instant claim has been determined on the same property in Award 10951 in which the facts are similar to those found here. It therefore follows that on the authority of that award, the claim will be denied.

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 Agreement was not violated.

AWARD

Claim 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.