Award No. 12110
Docket No. TE-10438

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway that:

1. The Carrier violated the Telegraphers' Agreement at Durham, North Carolina when, on March 25, 1957 at 8:45 A. M., it permitted or required one W. D. Copeland, an employe not covered by said Agreement, to receive (copy and transcribe) a message transmitted by telephone from Duncan, North Carolina to Durham at a time when the operator-clerk was available but not on duty.

2. The Carrier shall now be required to compensate Operator-Clerk B. G. Howard, Durham, for the minimum payment of a "call", i.e., two (2) hours at overtime rate.

3. The Carrier violated the Telegraphers' Agreement at Durham, North Carolina when, on April 1, 1957, at 8:50 A. M., it permitted or required one W. T. Holloway, an employe not covered by said Agreement, to transmit a message by telephone from Durham to Duncan; and at 9:05 A. M. to receive (copy and transcribe) a message transmitted by telephone from Duncan to Durham, both at a time when the operator-clerk was available but not on duty.

4. The Carrier shall now be required to compensate Operator-Clerk B. G. Howard, Durham, for the minimum payment of a "call"; i.e., two (2) hours at overtime rate.

EMPLOYES' STATEMENT OF FACTS: Claimant, Mr. B. G. Howard, was the duly and regularly assigned Operator-Clerk at Durham, North Carolina, on the dates of March 25 and April 1, 1957. His assigned hours were from 10:00 A. M. to 12:00 Noon, and 1:00 P. M. to 7:00 P. M. Prior to March 25 his starting time began at 9:00 A. M.

Carrier's main line extends southwestward from Norfolk, Virginia, to Charlotte, North Carolina, a distance of 382 miles. Raleigh, North Carolina, is 226 miles from Norfolk. Duncan, North Carolina, is 26 miles beyond Raleigh. At Duncan a branch line spurs off to Durham, due north, a distance of 40 miles. Between Raleigh (Carrier's principal headquarters terminal) and

of such communication so as to avoid error, and which memorandum was no longer of use or value thereafter.

All of the data contained herein has been discussed with the employe representatives, either in conference or by correspondence, and/or is known and available to them.

For the reasons stated, the respondent holds the claim is without merit, contrary to recognized and accepted practice, confirmed by the above-quoted portion of the supplemental agreement, and that same should be denied.

This submission is being made in accordance with motion of the Division adopted November 26, 1957, effective January 1, 1958, and the carrier reserves to itself all the rights accorded to it by provisions of said motion, as well as to make any further answer to petitioners' statements, briefs or submission it may deem necessary.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a Scope Rule Case. An analysis of the Awards on this problem shows nothing but contradiction, confusion and consternation. Out of the myriad of Awards cited by both parties, this Referee has come to the conclusion that Award 10836 involving the same parties is most similar and is not palpably wrong. Therefore, a denial award is in order.

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 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 24th day of January 1964.

DISSENT TO AWARD 12110, DOCKET TE-10438

I hereby express disagreement with this award.

First of all, I deeply resent the flippant and perfunctory brushing aside of an extremely important issue. The dispute presented by this record involves the deep-seated, fundamental right of a respected craft of employes

to perform its traditional work. The issues were argued to the Referee meticulously and at more than usual length. And at his request a second discussion of those issues was held. Then, in spite of the obvious importance of the case, the whole matter was washed out by a single, five line paragraph likening this case to Award 10836, all of which is "palpably wrong."

Award 10836 contained not a point of similarity in issues to those of this case. It dealt with three types of situations: (1) Those where employes classified by agreement as non-telegraph, non-telephone agents, and paid a lower rate than employes classified as telegraphers or telephoners, were required to perform telephone communication work. The issue was whether such duties required reclassification and higher rates of pay. (2) Those where section foremen used telephones at places where telegraphers were not employed to communicate matters pertaining solely to their work. The issue was whether such use of the telephone was "in lieu of telegraph" so as to invade telegraphers' general rights. (3) One instance of an officer of the Carrier using the telephone to communicate with another officer about the freight car situation. The issue was whether the action ran afoul of a letter interpretation of the agreement.

In the present case, an entirely different situation was involved. The location was a place where a telegrapher was employed on a position established primarily, if not solely, because of the need for communication work of the precise kind involved. On three occasions, one of which occurred on the same day that the assigned hours of the telegraphers' position were changed to eliminate overtime (see Award 11958) other employes were used to handle communication work by telephone. These communications were not mere conversations with someone else, as was the case in all three categories of claims in Award 10836, but were messages telephoned to a telegrapher at another station and by him relayed to their proper destinations.

Claims were filed in each of the three instances, were declined and appealed in the usual manner. On the first appeal one of the claims was allowed. In further handling of the two remaining, the General Chairman asserted, without denial by the Carrier, that the three incidents were identical in substance.

Furthermore, as was pointed out to the Referee, both in written and oral presentation, the parties have a special memorandum agreement (made a part of this record by the Carrier) which clearly differentiates between places where telegraphers are and are not employed. At places like Durham, where a telegrapher is employed, only in emergencies may some other employe use the telephone to handle "line-ups or other written instructions." This memorandum itself made this case entirely different from all the incidents covered in Award 10836, and also required allowance of the two remaining claims.

For all of these reasons Award 12110 is erroneous. Besides, its brevity and flippancy can serve only to lower the dignity and effectiveness of this tribunal which was established by Congress to seriously consider and correctly decide legitimate disputes in the railroad industry so that the "general welfare" of all the people might be promoted.

I dissent — emphatically.

LABOR MEMBER
J. W. Whitehouse

February 20, 1964