

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad, that:

1. Carrier violated the Agreement between the parties when on March 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, April 3, 4, 5 and 7, 1961 (and other dates), it required or permitted employes not covered by the Agreement at Albert Lea, Minnesota, and Estherville, Iowa, to transmit and receive by telephone, matters and messages of record involving train movements.

2. Because of these violations Carrier shall compensate Telegrapher G. H. Durbala at Albert Lea, and Telegrapher E. N. Kultalla at Estherville, in the amount of one call allowance each for each day shown above (a total of 26 call allowances each).

3. Carrier shall be required to reinstate one telegrapher position at each of the above named locations, restoring much needed round-the-clock telegraph train order service.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties effective August 1, 1947 (reprinted November 1, 1956), as amended and supplemented, is available to your Board and by this reference is made a part hereof.

At Albert Lea, Minnesota, until about 1943, around-the-clock telegraph and train order service was maintained at the passenger station, and, tower-men were employed on an around-the-clock basis at the interlocking plant located about one-fourth mile south of the passenger station. The position of Supervisory Agent was only partially covered by the Agreement.

About 1943, the telegrapher positions at the passenger station at Albert Lea were discontinued, and the telegraph and train order work for the station was given to the employes at the interlocking plant. Rate of pay for the

follows, therefore, that 8358 is valueless as a precedent since it was fantastically bottomed upon 3199 through some unfathomable medium that the referee admitted in his OPINION could not be determined.

Therefore, it is upon this Award the Organization pins its hopes to bind the use of telephones on this carrier to telegraphers exclusively claiming complete immunity to the myriad of well reasoned awards dealing with messages of record simply because of the existence of 8358.

The Carrier here has meticulously laid out the facts of 3199, 3200 and the fallacy of 8358. The Carrier is certain the Board will give those awards the attention which they deserve which is—having no precedent value at all—none.

The Organization, of course also cites as support the instructions of a local superintendent not even on this territory. This, of course, is completely irrelevant and in no way constitutes an agreement. Let us say though that receiving a thing like 8358 is enough to make any superintendent cautious.

Among other Awards we refer the Board to Award 9953 and the many awards mentioned therein and a comparison of the messages involved in that Award. In that award is another example of the Board's consistent dealing with the question of messages of record, which is all the telegraphers are entitled to, and the question of telegraphers contending use of telephone belongs exclusively to them.

We are certain the Board will apply those principles here and not say both principles are overridden as a result of a compromise by the Board itself in 3199 and 3200.

The Organization cannot show anything that required these conversations to be made a matter of record and these conversations were not in lieu of any telegraph service performed by a member of the Organization.

This claim is totally without merit and should be denied.

OPINION OF BOARD: This dispute arose over the Clerk at Albert Lea, Minnesota, when he telephoned the consist of Train No. 55 to the Clerk at Estherville, Iowa, at a time of night when telegraphers at both points were off duty on the various dates in March and April 1961 as specifically alleged in the claim.

It was the contention of the Claimants that the messages are a record of the contents of Train No. 55 as to cars destined west of Estherville. That this record was necessary to the yard forces at Estherville to determine if Train No. 55's connection should be held at Estherville until No. 55 arrives from Albert Lea. It was a communication of record, necessary for the efficient operation of the Carrier and supported by Award 8663 of this Division. In the instant case, work covered by the Agreement was performed by employees not covered thereby depriving the employees covered of their seniority rights.

It was the contention of the Carrier that the communications were mere telephone conversations and not matters of record. That the messages show no time of receipt, no address, identifies no sender nor do they show the consist of Train No. 55 on any date.

We are of the opinion that the facts and circumstances existing in

Award 8358 involving the same Claimant and the same Carrier supports the contention of the Claimants herein.

We are further of the opinion that this Board is without authority to establish positions as requested in Claim No. 3 wherein a request is made to reinstate abolished positions.

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 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

Claim No. 1 Agreement was violated.

Claim No. 2 Agreement was violated.

Claim No. 3 Agreement was not violated.

AWARD

Sustained and denied according to the Findings.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March, 1964.