

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ANN ARBOR RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Ann Arbor Railroad, that:

1. The Carrier violated the parties' Agreement when, on February 22, 1958, it required or permitted Conductor Willoughby, in charge of Extra 56 to report (OS) his train's arrival at Ferry Yard Office, Ann Arbor, Michigan, over the telephone to the train dispatcher.

2. The Carrier shall, because of the violation set out above, pay Joseph C. Lipka, Telegrapher, Ferry Yard Office, Ann Arbor, Michigan, a two (2) hour call.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective September 1, 1955, as amended.

At page 21 of said Agreement is listed the position existing at Ferry Yard Office, Ann Arbor, Michigan, on the effective date of the Agreement. The listing is:

Location	Title	Rate per Hour
Ferry	Telegrapher	\$1.80½

J. C. Lipka, Claimant, is the regularly assigned Telegrapher at Ferry (Yard Office) hours 8:00 A. M. to 5:00 P. M., one hour meal period, work week Monday through Friday, Saturday and Sunday rest days.

On Saturday, February 22, 1958, rest day of Claimant, at or about 8:32 A. M., Conductor Willoughby in charge of Extra 56, the Ann Arbor Turn, operating between Toledo, Ohio, and Ann Arbor, Michigan, did by the use of the telephone from Ferry Yard Office, Ann Arbor, transmit the following train report (OS) of record to the Train Dispatcher at Owosso, Michigan.

"Ann Arbor Turn arrived Ferry 8:32 A. M. with eleven loads and no empties, 887 actual and 947 adjusted tons; handled 15 loads, 1

Attention is called to the fact neither that rule nor any other rule in the agreement refers to telephones.

The claims should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. On Saturday, February 22, 1958, rest day of Claimant, at 8:32 A. M., the Conductor in charge of Extra 56, the Ann Arbor Turn, operating between Toledo, Ohio, and Ann Arbor, Michigan, did by the use of the telephone from Ferry Yard Office, Ann Arbor, transmit the following train message to the Train Dispatcher at Owosso, Michigan.

"An Arbor Turn arrived Ferry 8:32 A. M. with eleven loads and no empties, 887 actual and 947 adjusted tons; handled 15 loads, 1 empty 114 actual and 947 adjusted tons, leaving here in about 15 minutes."

The Claimant is the regularly assigned Telegrapher at Ferry (a yard office) hours 8:00 A. M. to 5:00 P. M., Monday through Friday.

It is the contention of the Claimant that the communication was one of record. The Dispatcher used the information to record on his train sheet, the arrival of the train at Ferry. It notified the Dispatcher the whereabouts of the train, so that they could be located immediately if necessary. Furthermore, if the Claimant was on duty he would have performed the work, as has been the practice in the past.

The Carrier contended that the Agreement does not give Telegraphers exclusive right to transmit communications of record by telephone. Also the Conductor was neither instructed nor requested to furnish the information by telephone to the Dispatcher.

The question in dispute is: Did the sending of this message by the Conductor violate the Telegraphers' Agreement?

The Board is of the opinion that since the Scope Rule does not specifically define or describe the work of a Telegrapher, but lists general classes of employees covered by this Agreement their work under the rule is determined by custom and practice. The Claimant contended in the record which we quote in support of their position:

"Without question, had Operator Lipka been on duty, he would have handled this work and it would have been his duty to do so . . . Historically, on this property, it has been recognized that employees covered by the Telegraphers' Agreement are exclusively entitled to perform work of handling communications of record . . ."

". . . The information was a matter of record . . ."

The Carrier does not deny the above statements in the record. Neither does the Carrier offer evidence that other classes of employees perform this work. Thus we must accept the contention of the Claimant that this work is performed by Telegraphers.

Hence we are of the opinion that messages concerning the operation of trains, that are of record, under the facts and circumstances herein, is properly Telegraphers' work.

The Awards of this Board have followed the general principle of law, that when the Agent is working on behalf of his master's business, the master is responsible for his acts. Thus the Conductors acts on behalf of the Carrier, when in performance of his duties, binds the Carrier.

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 violated.

AWARD

Claim sustained.

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.

CARRIER MEMBERS' DISSENT TO AWARD 12309
DOCKET TE-11091

(Referee Kane)

The majority's decision is not only palpably wrong, but is obviously the result of disregarding two awards involving these same parties covering an interpretation of the same Scope Rule. See Awards 11661 and 11908.

For these reasons, among others, we dissent.

R. E. Black
R. A. DeRossett
W. F. Euker
W. M. Roberts
G. L. Naylor