

Award No. 12383

Docket No. TE-10806

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

1. Carrier violated the Agreement when on August 10, 13, 20, 21 and 23, 1956, it required or permitted Section Foreman B. A. Lashley; and on September 6, 1956, it required or permitted Section Foreman H. G. Lashley, employees not covered by the Telegraphers' Agreement, to perform work of transmitting messages (communications of record) by telephone from Wadley, Alabama, when the Agent-Telegrapher was not on duty, but was readily available for call.

2. Carrier shall compensate J. E. Hardy, Agent-Telegrapher, Wadley, Alabama, for six (6) calls of two hours each, at time and one-half regular rate (regular rate \$2.03 per hour) for violations set forth in paragraph 1. Total amount claimed \$36.54.

3. Carrier violated the Agreement when on September 1 and 8, 1956, it required or permitted Mr. Copeland, an employee not covered by the Telegraphers' Agreement, to perform work of transmitting messages (communications of record) by telephone at Talladega, Alabama, at a time when the Clerk-Telegrapher was on rest day, but readily available for call to perform such work.

4. Carrier shall compensate B. N. McCrary, Clerk-Telegrapher, Talladega, Alabama, for one (1) call on each date, at time and one-half regular rate (regular rate \$1.97 per hour) for violations set forth in paragraph 3. Total amount claimed \$11.82.

5. Carrier violated the Agreement when on August 24, 1956, it required or permitted Section Foreman J. L. Morgan, an employee not covered by the Telegraphers' Agreement, to perform work of transmitting messages (communications of record) by telephone at Roanoke, Alabama, at a time when the Agent-Telegrapher was not on duty, but readily available for call.

6. Carrier shall compensate B. O. Barnes, Agent-Telegrapher, Roanoke, Alabama, for one (1) call of two hours at time and one-half regular rate (regular rate \$2.37 per hour) for the violation as set forth in paragraph 5. Total amount claimed \$7.11.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect collective bargaining Agreements entered into by and between Atlantic Coast Line Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreements are, by reference, made a part of this submission as though set out herein word for word.

The three disputes submitted herein involve interpretation of the collectively bargained Agreements and were handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. This Board has jurisdiction of the parties and the subject matter under the provisions of the Railway Labor Act, as amended.

For convenience in referring to the three disputes submitted herein, which were handled on the property as separate disputes but involve identical rules, we shall refer to the claims arising at Wadley (paragraphs 1 and 2, Statement of Claim) as Case No. 1. The claims arising at Talladega (paragraphs 3 and 4, Statement of Claim) as Case No. 2. The claim arising at Roanoke (paragraphs 5 and 6, Statement of Claim) as Case No. 3.

The sole issue in this dispute is whether the claimants had the contractual right to perform the work involved herein. The compensatory claims are only collateral issues in that the Carrier does not dispute the correctness of these claims once the substantive claims of violation are settled.

CASE NO. 1

(Paragraphs 1 and 2, Statement of Claim)

1. J. E. Hardy, claimant, was at all times involved herein, the regular assigned occupant of the position of agent-telegrapher at Wadley, Alabama.

2. The regular assigned hours of the claimant were 7:30 A.M. to 4:30 P.M. with one hour for lunch.

3. The work days of the assignment of the claimant were Monday through Friday, with assigned rest days of Saturday and Sunday of each week.

4. There are no other Telegrapher Agreement assignments at Wadley.

5. On August 10, 1956, Mr. B. A. Lashley transmitted by the use of the telephone from Wadley, Alabama at 5:30 P.M., the following message:

"HCT Manchester

Cancel 15 mile an hour slow order from MP NJ 857 8/10 to NJ 858

/s/ B. A. Lashley SF"

6. On August 13, 1956, Mr. Lashley transmitted by the use of the telephone at Wadley the following message:

evidence presented, one might reasonably reach an opposite conclusion. Under such circumstances, the claim is without merit."

The record in Docket TE-5988 and Award No. 6032 are, by reference, made a part of this submission.

There is no restriction by rule, custom or practice which reserves the use of the telephone to any single craft or class of Carrier's employees, the only exception being that no employee other than those covered by the Telegraphers' Agreement (and train dispatchers) will be permitted to handle train orders. Furthermore, there is no requirement in the scope rule, or any other rule of the agreement, that conversations pertaining to slow orders, placement of cars containing company material for roadway work, and operation of progress of the Speno Ballast Cleaner, have to be handled by a telegrapher. The use of the telephone by Section Foremen and other employees in communicating information of this character through a telegrapher at a nearby station is no different than the use of the telephone by Section Foremen and other employees in requesting and receiving line-ups of trains, which procedure, under Award No. 6032 of your Board, is not in violation of the agreement or practice on this property.

The Organization, for many years, has been aware of the fact that the telephone is used for general conversational purposes and that its use by all employees is permitted under the agreement. The Organization has acknowledged this fact by serving, over a period of 13 years, numerous proposals which, if adopted, would change the agreement rules.

Carrier contends that if the Organization desires to change the agreement or practices, that it should seek to negotiate any change desired, rather than attempt to secure a rule through an interpretation of your Board, which they have been unable to secure through negotiation.

There is no merit in the claims, and the Board is respectfully requested to decline them.

OPINION OF BOARD: This dispute, involving three claims which arose out of occurrences at three different locations at Wadley, Talladega, and Roanoke, Alabama, concerns the basic issue of whether Carrier violated the Telegraphers' Agreement when it required or permitted employees not covered by that Agreement to perform the work of transmitting messages by telephone. The messages were transmitted through the nearest operator to the Chief Dispatcher.

We first look to the Agreement to determine if it reserves the work in question exclusively to the employees on whose behalf the claim is made. We find that the Scope Rule is of the general type which enumerates positions, but does not define the work specifically allocated to telegraphers. We then search the record for evidence that the work in dispute has been performed exclusively by this craft through practice, custom, and tradition. We do not find that it is enough for Petitioners to show that telegraphers customarily performed the work. They must prove that the telegraphers handled the messages to the exclusion of all other classes of employees. We observe that the messages transmitted by telephone contained information related to the work for which the employee was responsible in the course of his regular duties, as for example, directions or instructions within his jurisdiction as a supervisor. The telephone is not an exclusive instrument of the telegraphers' craft, but is a tool necessary and available to other classes of employees in their duties.

We are not persuaded that because these telephone communications were put in writing, they were messages of record and, therefore, exclusively work of telegraphers. This interpretation would limit the functioning of many employes in carrying out their duties and responsibilities. Telephone conversations are an integral part of their routine activities. Considering the nature and purpose of these messages and considering that Carrier was not required by rules to keep records of this type of message, we conclude that they are not messages of record and, therefore, not the exclusive work of telegraphers.

We find Award 6032 pertinent because the issue concerned the use of the telephone by a section foreman to obtain line-ups and because Organization included arguments similar to those presented in the instant case. That award did not consider the copying of line-ups an encroachment upon the telegraphers' scope rule. Similarly, we are not of the opinion that other informational messages incidental to the work of employes constitute an infringement of the rights of the telegraphers' craft.

We are also not persuaded that settlements of dispute made on the property, as Organization urges, are precedents in interpreting the Agreement. In many instances these settlements are compromises, and do not necessarily reflect the merits of the case.

We note that on several occasions Organization failed in its attempts by negotiation with Carrier to secure modification of the Agreement so as to confer on telegraphers the exclusive right to the work under consideration in the instant case. Since there is no rule in the Telegraphers' Agreement which reserves the work in question exclusively to telegraphers and since there is no showing that the work has been exclusively reserved to them by tradition, historical practice, and custom, we hold that the claim is without merit.

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 of the parties 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 31st day of March 1964.