

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines), that:

1. The Carrier violated the parties' Agreement when, on December 2, 1957, it required or permitted a clerical employe in the Roadmaster's Office at Winnemucca, Nevada, not covered by the Telegraphers' Agreement to receive a message of record over the telephone from the Section Foreman at Harney, Nevada.
2. The Carrier shall, because of the violation set forth above, compensate P. E. Jeter, Winnemucca, Nevada, a "call."

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective December 1, 1944, reprinted March 1, 1951, and as amended.

At page 51 of said Agreement are listed the positions existing at Winnemucca, Nevada, on the effective date of the Agreement. They are:

Location	Title of Position	Hourly Rate of Pay
Winnemucca	Agent-Telegrapher	
	Monthly rate \$330.17	\$1.9498
Winnemucca	1st Telegrapher-Clerk	1.65
Winnemucca	2nd Telegrapher-Clerk	1.65
Winnemucca	3rd Telegrapher-Clerk	1.65

Briefly, the facts involved in this dispute are: At 7:42 A. M., December 2, 1957, the Section Foreman at Harney, Nevada, transmitted the following message of record over the telephone to a clerical employe in the Roadmaster's Office at Winnemucca, Nevada. The message:

SECOND. While it does appear that the message in question was reduced to writing, it does not appear that there was any requirement that it was to be considered a message or report of record. The mere fact that somebody reduces the substance of a telephone call to writing does not make it a message of record.

* * * * *

In view of the foregoing considerations we are unable to conclude that the transmission or the receipt of this message was the exclusive work of telegraphers. We reach this conclusion independently of Awards 5181 and 5182."

The foregoing, Carrier submits, successfully refutes petitioner's contentions that the work forming basis of this claim is allocated to telegraphers under the Scope Rule of the current agreement. Therefore, since that work cannot be shown to be allocated to telegraphers under the Scope Rule of the current agreement, Rules 2, 16 and 17 of that Agreement to which petitioner refers in support of its contentions are in no way involved.

The facts in this claim readily establish that the telephone conversation between the section foreman at Harney and roadmaster's clerk at Winnemucca on the date of this claim did not involve or contravene any provision of the current agreement. The conversation was purely an exchange of information pertinent to the normal functioning of the Maintenance of Way and Structures Department and in no manner involved the craft here making claim.

CONCLUSION

Carrier has conclusively shown herein the claim is unwarranted and totally lacking in merit, and if not dismissed for lack of proper notice to other interested parties, Carrier asks that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On December 2, 1957, a Section Foreman at Harney, Nevada, telephoned the Roadmaster at Winnemucca, Nevada, and advised him as follows:

"Tony Mendez Social Security No. 460-48-9069 send paycheck for the 2nd period of November care of S. P. Agent, Sacramento. 2nd period Nov. 80 hours regular J. V. Moan \$46.41 resigned laborer."

This is not a message of record. It does not involve the operation or movement of trains or the safety of persons and property. What constitutes a communication of record depends upon the facts and circumstances in each case. See Award 12116.

Petitioner alleges that Carrier violated Rule 1 — Scope. This Rule does not define nor describe the work of the employees covered by the Agreement. In the absence of such definition or description, Petitioner has the burden to prove that such a message belongs to Telegraphers by tradition, custom or practice. Petitioner admits this to be the principle established by this Division of the Board when it says in its Ex Parte Submission:

"Scope Rules of this Organization purposely do not spell out, in so many words, the work which is embraced within the terms of the Agreement, but it is an accepted and well established fact that they do cover work. They are within the category of Scope Rules 'general in character' where tradition, historical practice and custom define the work covered; hence they cover all of the work traditionally, historically and customarily performed generally by the classes of employees therein specified. Awards 3003, 3004, 3999, 4516, 5038, 5133. They identify the employees by classes, who by tradition, historical practice and custom possess the contractual right to perform all of the work encompassed by the Agreement, an integral and unquestioned part of which is telegraphic communications work with all of its many phases."

This, however, is a mere assertion. It is not probative evidence. There is no evidence in the record which established the fact that such a message is by tradition, custom or practice work which belongs exclusively to Telegraphers under the Agreement. Petitioner has failed to meet the burden of proof.

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

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June 1964.