

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:

CLAIM NO. 1

1. The Carrier violates the parties' Agreement at Yuma and Phoenix, Arizona, when it requires and permits employes in the baggage room of the respective stations named herein, who are not covered by the Telegraphers' Agreement, to transmit or receive consists of trains Nos. 39 and 40, transportation communications of record, over the telephone.

2. The Carrier shall, because of the violations set out above, compensate the following:

(a) W. T. Huey, regularly assigned 3rd shift Wire Chief-Telegrapher, Yuma, one special call each date February 15-16-17-18-19, March 1-2-3-4-5-9-10-11-12-16-17-18-19-22, 1959.

(b) J. P. Ray, regularly assigned 2nd shift Wire Chief-Telegrapher one special call each date February 15-19-21-22-28, March 1-5-11-12-13-18-19-20, 1959.

(c) D. T. Marty, regularly assigned Telegrapher-Clerk-PMO, Position No. 5, Yuma, for one special call each date, February 14-16-20, March 2-6-7-8-9-13-16-17-21-22, 1959.

(d) P. M. Bertoldo, regularly assigned Relief Telegrapher-Clerk-PMO, Wire Chief, Yuma, Position No. 26, for one special call each date, February 14-17-18-21, March 3-4-7-10-14-20, 1959.

(e) R. I. Booth, regularly assigned Relief Wire Chief-Telegrapher, Yuma, one special call each date February 15-20, March 6-13-20, 1959.

3. The Carrier shall, in addition to the foregoing, for each date subsequent to those set out in Items (a) through (e) above, on which employes not covered by the parties' Agreement at Yuma and Phoenix, Arizona send or receive messages of record over the telephone in the manner herein described, compensate an available telegrapher at the stations named herein in accordance with applicable rules.

CLAIM NO. 2

1. The Carrier violated the parties' Agreement at Tucson, Phoenix and Yuma, Arizona, when it requires and permits employes in the baggage rooms of the respective stations named herein, who are not covered by the Telegraphers' Agreement, to transmit or receive consists of Trains Nos. 39 and 40, transportation messages of record, over the telephone.

2. The Carrier shall because of the violations set out above, compensate the following:

(a) W. M. Gorman, regularly assigned Manager-1st Wire Chief, Phoenix, assigned Sunday thru Thursday, 8 A. M. to 4 P. M., rest days Friday and Saturday, or his successor, for one special call each date, November 25, December 8-14 (two special calls), 17-18-22-24-25-26-28-31, 1958, January 1-11-13-18-19-21-24-26-27-29, February 1-2-3-5-10-11-14-18, March 4-8-11-19 and 22, 1959; also for overtime specified on the following dates: November 27, 1958—55 minutes; December 3, 1958—5 minutes; December 4, 1958—one hour; December 5, 1958—one hour; December 9, 1958—18 minutes; December 11, 1958—10 minutes; December 15, 1958—17 minutes; January 8, 1959—55 minutes; January 14, 1959—55 minutes; January 20, 1959—45 minutes; January 28, 1959—55 minutes; February 15, 1959—20 minutes; February 16, 1959—20 minutes; February 17, 1959—20 minutes; February 19, 1959—25 minutes; February 28, 1959—30 minutes; March 1, 1959—58 minutes; March 2, 1959—37 minutes; March 5, 1959—17 minutes; March 10, 1959—30 minutes; March 12, 1959—22 minutes; March 17, 1959—13 minutes; March 18, 1959—10 minutes.

(b) G. A. Gilliam, regularly assigned 2nd Wire Chief, Phoenix, assigned Tuesday thru Saturday, 4 P. M. to 12 midnight, rest days Sunday and Monday, or his successor, for one special call each date, November 22-25-28, December 2-3-16 (two special calls), 19-27 (two special calls), 1958, January 9-10-14-17-19-22-23-24, February 5-6-7-8-9-12 (two special calls), 13-14-18-21, March 3-4-5-13 (two special calls), 18 and 19, 1959; also for overtime specified on the following date: December 13, 1958—24 minutes.

(c) N. E. Marquis, regularly assigned 3rd Wire Chief, Phoenix, assigned Saturday thru Wednesday, 12 midnight to 8 A. M., rest days Thursday and Friday, or his successor, for one special call each date, November 23-24-26-29, December 6-12-15-16-19-20-21, 1958, January 3-6-16-18-20-21-25-27-28-30-31, February 1-2-3-4 (two special calls), 8-9-10-11-15-16-17-19, March 2-3-6-7-9-10-11-12-14-17-18-21 and 22, 1959.

The facts in this claim readily establish that the telephone conversation between the clerks at Yuma, Phoenix and Tucson on the dates of claim did not involve or contravene any provision of the current agreement. The conversations were purely an exchange of information pertinent to the functioning of the mail handling force and in no manner involved the craft here making claim.

In addition to the foregoing, even if petitioner's position in this case were to be sustained (carrier asserts there is no basis for sustaining that position) there still would be no valid basis for time and one-half rate. Insofar as the overtime rate is concerned, the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of awards of this Division, some of the latest being 6873, 6875, 6974, 6998, 7030, 6978, 7105, 7062, 7100, 7110, 7094, 7138 and 6750 on this property.

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 the other interested parties, Carrier asks that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The two claims involve the same issue.

Carrier operated Trains Nos. 39 and 40 jointly with the Rock Island over Carrier's line between Los Angeles and Tucumcari. Effective October 26, 1958, the westbound movement and effective October 27, 1958, the eastbound movement, the schedules of these trains were expedited. The number of stops were reduced, the points at which mail, baggage and express were handled were reduced, and train baggageman service was reduced to operation between Tucson and Yuma instead of between Los Angeles and Tucumcari.

Petitioner's Local Chairman presented Claim No. 1 in a letter addressed to Carrier's Superintendent at Los Angeles, under date of April 10, 1959, and another Local Chairman presented Claim No. 2 in a letter to Carrier's Superintendent at Tucson, Arizona, on January 13, 1959. In each of the letters the Local Chairman said, in substance, that prior to Sunday, October 26, 1958, when the new schedule on Trains 39 and 40 were effective, the handling of consists of these trains were handled exclusively by employes covered by the Telegraphers' Agreement at Phoenix and Tucson on the Tucson Division and at Yuma on the Los Angeles Division. Clerks at Phoenix, Tucson and Yuma were violating this Agreement when they telephoned these consists from Phoenix to Tucson and Yuma immediately on departure of Trains 39 and 40.

Petitioner contends that Carrier never denied that the claims, as presented, were consists. This is not a fact. On March 9, 1959, Carrier's Superintendent at Tucson, Arizona, wrote to Petitioner's Local Chairman, in part, as follows:

"The consists of these trains were transmitted by employes covered by Telegraphers' Agreement and accordingly did not deprive any Telegrapher of work to which they were entitled."

Again on July 17, 1959, Carrier wrote to Petitioner's General Chairman, in part, as follows:

"As stated to you in conference, these were merely telephone conversations between two clerks, and no provision of the current Telegraphers' Agreement reserves to employees covered thereby the exclusive right to this work."

The record shows that the consists on the dates mentioned in the two claims were transmitted by employees covered by Telegraphers' Agreement.

The question then is whether the conversations between the Clerks are messages of record to give Claimants exclusive right to that work.

Petitioner argues that the claims should be sustained on the basis of Awards 4249, 10364, 10767 and 10777. In Award 4249 the claim was sustained because the telephone message cancelled previous instructions and issued new instructions to Trainmaster for a train that had a run out of New Orleans. These instructions were carried out before a telegrapher transmitted the same information to the Trainmaster at New Orleans. In upholding the Organization's position that the confirming telegraph message was not in compliance with the Scope Rule, we said:

"The transmission of instructions given over the telephone directing the train movement crew consist and train make-up was clearly the work of telegraphers."

The claim in Award 10364 was sustained because the Carrier admitted the basic facts upon which the complaint was based. The claim in Award 10767 was sustained because Carrier's Division Superintendent wrote to the Organization as follows:

"My investigation of this claim indicates that the Cabot Carbon Company were urgently in need of this car, and in order to get the information as quickly as possible, the utility clerk called the Division Freight Office at Amarillo for their assistance. The utility clerk intended to confirm the telephone conversation by telegram, however, his attention was directed to other duties, and he overlooked filing the telegram."

We found that the "utility clerk and the Superintendent thought that a message of record had been communicated within the understanding of the parties."

In Award 10777 we sustained the claim because the issue was the same as in Award 10364. The dispute in Award 10364 involved the same parties, "on the same property and including one of the same messages complained of here."

The claims involved in the current dispute do not arise out of messages of record "diverting train movement crew consist and train make-up"; Carrier did not admit the basic facts upon which the complaint was based; neither the clerks nor any agent of the Carrier "thought that a message of record had been communicated within the understanding of the parties."

The communications between the clerks did not relate to the control of transportation and a record was not required to be preserved. The consists, which were handled by telegraphers on each of the dates set out in the claims, covered train controls and record keeping.

Not all telephone messages are the exclusive work of telegraphers. A telephone message by a clerk, "which does not affect the operation of trains as do train orders and other communications relating to or affecting the safety of persons and property and which by their very nature should be made of record would not be exclusively reserved to telegraphers. . . . The mere fact that some are, reduces the substance of a telephone call to writing does not necessarily make it a message of record as that phrase is commonly understood in railroad operation." Award 10525.

There is no merit to the claims.

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 the Carrier did not violate the Agreement.

AWARD

Claims No. 1 and No. 2 are 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.