

Award No. 12610
Docket No. TE-12113

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Ref

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 violates the parties' Agreement at Bakersfield, California, when it requires or permits employes not covered by the Telegraphers' Agreement to telephone transportation communications of record to covered employes at Delano, Calif.

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

(a) L. E. Scott, Relief Wire Chief-Telegrapher, Bakersfield, California, and/or his successor, one special call for June 7, 1959.

(b) J. Panick, 1st Telegrapher-Clerk-PMO, Bakersfield, and/or his successor, for one special call, June 8, 1959.

(c) D. Meyer, 3rd Wire Chief-Telegrapher, Bakersfield, and/or his successor, for one special call, June 15, 1959.

3. The Carrier shall, in addition to the foregoing, for each date subsequent to those set out in Items (a) through (c), on which employes not covered by the parties' Agreement at Bakersfield, California, transmit messages of record over the telephone in the manner herein described, compensate an available telegrapher at Bakersfield, in accordance with applicable rules.

EMPLOYEES' 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 62 of the said Agreement are listed the positions existing at Bakersfield and Delano, California, on the effective date of said Agreement. Listings are:

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 use of the telephone by clerks at Bakersfield for the exchange of information necessary in the performance of their regular duties with telegrapher-clerk at Delano did not involve or contravene any provision of the current Agreement. The action forming basis of this claim is analogous to that involved in claims progressed by Petitioner in Carrier's Exhibits A, B and C, and it must be obvious to the Division that if the issue was without merit at the time the claims there involved were abandoned by Petitioner in this dispute (Grand Officer Docket of March 15, 1954), there is no reason whatever to conclude that that issue has now acquired a valid basis.

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 June 7, 1959, on June 8, 1959 and on June 15, 1959 a clerk at Bakersfield, California, not covered by Telegraphers' Agreement, telephoned certain car information to the Telegrapher-Clerk at Delano. Petitioner contends that these were communications of record, and in support thereof cite Awards 8663 and 9951 of this Division.

Award 8663 involved the same parties and the same Agreement. The involved messages were transmitted by a Clerk at Herlong to a Dispatcher. At the time that claim arose an Agent-Telegrapher was assigned to work at Herlong from 7:00 A. M. to 4:00 P. M. and a Clerk not covered by the Telegraphers' Agreement was assigned to work from 4:00 P. M. to 12:00 midnight. The Carrier in that Docket contended as follows:

"One of the duties of the position of clerk is and has been to telephone either dispatcher or assistant chief dispatcher advising of loaded or empty cars to be picked up at Herlong as released by the Sierra Ordnance Depot.

The information given by the clerk does not include car identification numbers, destination of cars; he simply advises that a certain number of cars are to be picked up and no permanent record of this conversation is made, either by the clerk or the dispatcher's office. This practice originated at Herlong when station was first opened and is no different than that in effect at numerous other locations on Carrier's property."

A few samples of the messages telephoned by the clerk at Herlong to the Dispatcher are as follows:

"January 6, 1954

To — Dispatcher

One load East of Fernley
One load West of Fernley
Three explosive for Modoc."

"January 7, 1954

To — Dispatcher

Five loads West of Fernley, including one dangerous and two explosive."

We said in Award 8663:

"The record contains samples of the messages transmitted by the clerk. They do not appear to be purely information but are communications of record and have to do in part with the operations of trains. For example some give car numbers with information as to the cargo and character and destination of shipment. The issue here is not the use of telephone as such by the clerks, but rather the type and kind of communications made by him on the telephone. In view of the character of these communications we must find that the claim has merit."

Even though the parties and the Agreement in Award 9951 are not the same, the facts and circumstances there involved are approximate and comparable to those covered in the dispute now under consideration. We said in Award 9951:

". . . the messages here were the type that were necessarily sent by telegram in the old days of Morse code. These cars had been loaded in Wilson, some miles away, were made into a train for Greenville before the shippers were able to furnish information as to consignee, destination and route. Therefore it was necessary to send this information to Greenville before the train arrived there. Traditionally that could have been done in no other way than by telegraph because of the distance and the time limit. Under Award 4516 this is clearly telegraph work."

The messages telephoned by the Clerk at Bakersfield to the Telegrapher-Clerk at Delano gave the car numbers, the direction of such cars and, when no bill of lading was available it was so indicated. For example, the message of June 7, 1959, said:

"To: Telegrapher Delano

PFE 41045 West PFE 8307 West PFE 41916 West PFE 9861
West PFE 64737 no bill West."

The one on June 15, 1959 said:

"To: Telegrapher, Delano

PFE 11451 — 42234 West Art 52375 West NWX 10016 West Bar
7856 West PFE 41607 West FGE 38690 West PFE 46280 West PFE
71721 East URT 37787 no bill West PFE 41667 East PFE 3209 East
NP 90810 East PFE 67973 East PFE 62684 East."

The messages are not purely informational. They are communications of record. They are concerned with the movement and operation of trains. Award 8663 is controlling and is affirmed.

Carrier emphasizes Awards 10492 and 10493 involving the same parties and the same Agreement as controlling. The communications in the two Awards are not comparable to those in this dispute. They concerned hours of work performed by track employees which were needed for payroll purposes, a report of materials used and on hand, the assignment of substitute engine employees, a report of equipment shortage, and a car report. None of the messages had to do with the operation of trains. They were not communications of record.

Awards 11343, 11147 and 9572 are not applicable. They do not involve the same parties nor the same Agreement. Where the Awards of the Board are not consistent those which involve the same parties, the same Agreement and comparable facts should be given preference in the application of the appropriate principles to the dispute under consideration. For this reason we conclude that the principle established in Award 8663 is controlling.

Telegraphers are employed in the Bakersfield station. The messages should have been transmitted by them. In their absence, they should have been called in accordance with the terms of the Agreement.

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 violated the Agreement.

AWARD

Claims sustained.

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.

**CARRIER MEMBERS' DISSENT TO AWARD 12610,
DOCKET TE-12113
(Referee Dolnick)**

This award purports to follow Award 9951, and Award 9951 in turn purports to follow Award 4516 (Carter) which Claimants here have cited extensively as a basis for their claim. Neither Award 4516, nor Award 9951

supports a claim that Telegraphers have an exclusive right to telephoning under their general Scope Rule unless that particular telephoning can be traced back to the Morse Code Operator. Award 4516 states in part:

“ . . . a reservation of work rule cannot create new work . . . the use of the telephone . . . was not in lieu of any work performed by a telegrapher and consequently is not reserved to the telegraphers by the Scope Rule. . . . ”

Under the ruling in Award 4516 (Carter), this claim should have been denied, for the telephoning involved here was never handled by the Morse Code Telegrapher. This telephoning is simply an incident to a relatively new method of handling billing on this Carrier's lines. See Awards 11343 (Miller), 11147 (Rose), 700 (no referee), among many others.

The rule properly applicable in this case was correctly stated by this Board in Awards 10492 and 10493 (Dugan) which involve the same parties and Agreement. Under that rule the Employees are not entitled to a sustaining award because they have failed to prove that the involved telephoning has traditionally been assigned to them exclusively on Carrier's system. See Award 12606 (Dolnick).

We dissent.

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