

Award No. 12611
Docket No. TE-12116

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 Phoenix and Tucson, Arizona, when it permits or requires employes not covered by the Telegraphers' Agreement to transmit or receive messages of record over the telephone.

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

(a) J. R. Kroll, Extra Telegrapher, occupying third shift Telegrapher-Clerk's position at Phoenix Yard Office one special call for February 23, 24, March 2, 3, 4, 5, 1959.

(b) K. A. West, Extra Telegrapher, occupying third shift Telegrapher-Clerk's position at Phoenix Yard Office one special call each date March 16 and 17, 1959.

(c) W. E. Johnson, Extra Telegrapher, occupying the Phoenix Yard Office-Tempe Relief position one special call for March 6, 1959.

3. The Carrier shall, in addition to the foregoing, for each date subsequent to those set out in Items (a) through (c) above, on which employes not covered by the parties' Agreement at Phoenix and Tucson transmit or receive messages of record over the telephone in the manner herein described, compensate the Telegraphers listed in Items (a) through (c) and/or their successor in accordance with applicable rules.

CLAIM NO. 2

1. The Carrier violates the parties' Agreement at Phoenix and Tucson, Arizona when it permits or requires employes not covered by the Telegraphers' Agreement to transmit or receive messages of record over the telephone.

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

(a) H. J. Edmunds, regularly assigned 3rd shift Wire Chief "UN" Tucson, one special call each date, February 23, 24, March 2, 3, 4, 5, 16, 17, 23, 24, 30, April 7, 21 and 28, 1959.

(b) G. V. Fimbres, Relief Wire Chief "UN" Telegraph Office, Tucson, for one special call for March 6, 1959.

3. The Carrier shall, in addition to the foregoing, for each date subsequent to those set out in Items (a) and (b) above, on which employes not covered by the parties' Agreement at Phoenix and Tucson transmit or receive messages of record over the telephone in the manner herein described compensate the Telegraphers listed in Items (a) and (b) above, and/or their successors in accordance with applicable rules.

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 pages 69 and 70 of said Agreement are listed the positions existing at Phoenix and at Tucson, Arizona, on the effective date of said Agreement. The listings in the order named are:

Location	Title of Position	Hourly Rate of Pay
Phoenix "FD"	1st Telegrapher-Clerk-PMO	\$1.69
Phoenix "FD"	2nd Telegrapher-Clerk-PMO	1.69
Phoenix "FD"	3rd Telegrapher-Clerk-PMO	1.69
Phoenix "MC"	Assistant Mechanician-Clerk-PMO	1.8225
Tucson	*Agent (ticket) Monthly Rate \$346.21	2.0446
Tucson "UN"	Manager-1st Wire Chief	2.0025
Tucson "UN"	2nd Wire Chief	1.92
Tucson "UN"	3rd Wire Chief	1.92
Tucson "UN"	Mechanician-Assistant Wire Chief	1.92
Tucson "UN"	Telegrapher-Clerk-PMO	1.77
Tucson "UN"	Telegrapher-Clerk-PMO	1.77
Tucson "UN"	Telegrapher-Clerk	1.77
Tucson "UN"	Printer Machine Operator-Clerk	1.77

This proposal is disposed of with the understanding that present rules and practices are undisturbed."

In this connection, the interest of employes represented by the Brotherhood of Railway Clerks is further demonstrated by the fact that employes represented by both the Brotherhood of Railway Clerks and The Order of Railroad Telegraphers are signatory to the Agreement of August 21, 1954, and the work at Phoenix was performed by clerical employes on August 21, 1954, and for many years prior thereto.

Attention is also called to Award 7826 on this property, where it was found that telephone calls passing between train dispatcher and roundhouse foreman covering instruction from former as to crews to be called by latter did not contravene rights of telegraphers under the current agreement.

The facts in this claim readily establish that the telephone conversations between the line desk clerk at Phoenix and the Chief Train Dispatcher at Tucson did not involve or contravene any provision of the current agreement. The conversations were purely an exchange of information pertinent to the normal functioning of the involved departments and in no manner involved the craft here making claim.

This claim is obviously invalid in its entirety; but even if it were valid, the penalty allowable would be at the straight time rate and not at the over-time rate claimed — see Awards 7094, 7222, 7239, 7242 and 7316, to cite a few.

CONCLUSION

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

(Exhibits not reproduced.)

OPINION OF BOARD: At the time the claims arose employes covered by the Telegraphers' Agreement were employed at Phoenix and Tucson. The positions, locations and hourly rates are in the Agreement and in the record.

On each of the dates noted in the claims, a Line Desk Clerk at Phoenix not covered by the Agreement, telephoned the Dispatcher at Tucson and reported the number of cars and their destination, whether east or west. A typical message reads:

"East 12 and 3, west 5 and 33."

All of the telephone messages upon which the claims are based are set out in the record.

On March 23, 1959, Petitioner presented Claim No. 1. Carrier replied that the claim was being investigated. On March 30, 1959, Carrier's Superintendent wrote to Petitioner's Local Chairman, in part, as follows:

"It is necessary for the Chief Dispatcher, Tucson, to secure information from Yard Office at Phoenix relative a number of loads and empties that are to move east and west out of Phoenix, so that he can plan the operations of trains from that point.

The securing of this information from the Yard office at Phoenix by the Chief Dispatcher at Tucson, does not violate any provisions of the Telegraphers' Agreement and cannot be considered as a message of record."

The claim was remanded to the Division for settlement. On May 26, 1959 the Superintendent wrote to the Local Chairman, in part, as follows:

"Information requested for which claim has been presented is no longer needed. **Thus the condition which gave rise to the instant claim has been corrected.** Your request that Telegraphers Knoll, West and Johnson be allowed additional compensation, February 23rd and certain subsequent dates is accordingly denied." (Emphasis ours.)

Claim No. 2 was presented on April 22, 1959. On May 26, 1959, the Superintendent wrote to the Local Chairman, in part, as follows:

"This claim was discussed with you in conference April 30th and May 8, 1959, at which time your allegations that the conversation between two offices were messages of record. **Also it was stated to you that the condition that gave rise to these claims was eliminated.**"

The messages transmitted by the Clerk were not informational. They were communications of record and have to do with the operation of trains. See Award 8663 between the same parties, the same Agreement and similar facts. Denial Awards 10492 and 10493 are also on the same property, but the messages therein involved are not identical. They were not communications of record.

The Awards cited by the Carrier are not applicable. They are not on the same property and the involved messages are not similar in kind.

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 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 12611,
DOCKET TE-12116
(Referee Dolnick)**

We do not agree with the ruling in Award 8663, but even that ruling does not support a sustaining award in this case. This award expands the erroneous doctrine followed in Award 8663.

There is no basis for the conclusion that the involved telephoning constituted a communication "of record" as that term has been used by this Board in reference to exclusive rights of Telegraphers. The correct rule which should have been applied in this case is the rule applied in Award 10492 (Dugan) and in Award 5866 (Douglass) on this same property, also see Awards 10425 - 10954 - 11707 (Dolnick).

We dissent.

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