

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 Railroad (Pacific Lines), that:

Claim No. 1

1. The Carrier violates the parties' agreement at Frink, Mortmar, Regina, Iris, Hugo, Beaumont, Ferrum, Glamis, Mecca, Wister, Banning, and Los Angeles, California, when it requires or permits employes not covered by the Telegraphers' Agreement at these locations to transmit and/or receive messages of record over the telephone.

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

(a) R. M. Gormley, regular assigned Telephone-Message-PMO 'HU' General Telegraph Office, Los Angeles, for one special call June 2, 1959.

(b) D. M. Craig, Extra Telephone-Message-PMO 'HU' General Telegraph Office, Los Angeles, for one special call June 8, 1959.

(c) Rose G. Cohen, Telephone-Message-PMO 'HU' General Telegraph Office, Los Angeles, for one special call, June 23, 1959.

(d) O. S. Johnson, Extra Telephone-Message-PMO 'HU' General Telegraph Office, Los Angeles, a day's pay (8 hours) for July 4, 1959, a holiday on which claimant was idle and available.

(e) J. F. Hayes, Extra Telephone-Message-PMO 'HU' General Telegraph Office, Los Angeles, a day's pay (8 hours) for July 6, 1959, a rest day on which claimant was idle and available.

3. The Carrier shall, in addition to the foregoing, for each date subsequent to those set out in Items (a) through (e), as reflected by supplemental claims filed by letters dated August 13, 1959, September 11, 1959, September 24, 1959, October 2, 1959, October 13, 1959, November 2, 1959, and December 2, 1959, on which parties not covered by the parties' agreement at the station locations set out in Item 1 of this Statement of Claim, transmit and/or receive messages of record over the telephone in the manner herein described, compensate the regular assigned telegraphers listed in Item 2, or their successors, in accordance with applicable rules.

Claim No. 2

1. The Carrier violated the parties' agreement at Lovelock and Winnemucca, Nevada, when it required or permitted employes not covered by the Telegraphers' agreement at these locations to transmit or receive messages of record over the telephone.

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

(a) G. A. Taylor, Second Telegrapher-Clerk, Lovelock, Nevada, one special call for September 6, 1959.

(b) E. W. Jorgenson, Third Telegrapher-Clerk, Winnemucca, Nevada, for one special call for October 11, 1959.

Claim No. 3

1. The Carrier violated the parties' agreement at Parran, Nevada, when on September 5, 1959, it permitted or required a car repairman, an employe not covered by the Telegraphers' agreement, to transmit a message of record over the telephone to the train dispatcher at Ogden, Utah.

2. The Carrier shall, because of the violation set out above, compensate L. P. Chamberlin, First Telegrapher-PMO-Clerk, Ogden, Utah, idle on his rest day, for one special call.

Claim No. 4

1. The Carrier violated the parties' agreement at Massie and Ogden, Utah, when on October 25, 1959, it permitted or required employes not covered by the Telegraphers' agreement at these locations to transmit and/or receive messages of record over the telephone.

2. The Carrier shall, because of the violation set out above, compensate L. P. Chamberlin, First Telegrapher-PMO-Clerk, Ogden, Utah, one special call.

Claim No. 5

1. The Carrier violated the parties' agreement at Toy, Nevada, and at Ogden, Utah, when on December 27, 1959, it required or permitted a car repairman, an employe not covered by the Telegraphers' agreement, to telephone a message of record to the train dispatcher at Ogden, Utah.

2. The Carrier shall, because of the violation set out above, compensate J. N. Dockter, Second Telegrapher-PMO-Clerk, Ogden, Utah, off duty at the time of the violation, and available, for one special 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.

CLAIM NO. 1

At pages 64, 65, 66, and 67 of said agreement are listed the positions existing at Banning, Beaumont, Glamis, Los Angeles, Mecca, Mortmar, and Wister, California, on the effective date of said agreement. The listings in the order named are:

Location	Title of Position	Hourly Rate of Pay
Banning	Agent-Telegrapher	1.6375
Beaumont	Agent	1.795
Beaumont	1st Telegrapher-Clerk-PMO	1.77
Beaumont	2nd Telegrapher-Clerk-PMO	1.77
Beaumont	3rd Telegrapher-Clerk-PMO	1.77
Glamis	1st Telegrapher-Clerk	1.6225
Glamis	2nd Telegrapher-Clerk	1.6225
Glamis	3rd Telegrapher-Clerk	1.6225
Los Angeles		
Dayton Avenue Tower	1st Telegrapher-Clerk-Towerman	1.6375
Dayton Avenue Tower	2nd Telegrapher-Clerk-Towerman	1.6375
Dayton Avenue Tower	3rd Telegrapher-Clerk-Towerman	1.6375
Dayton Avenue Tower	4th Telegrapher-Clerk-Towerman	1.6375
Dayton Avenue Tower	5th Telegrapher-Clerk-Towerman	1.6375
Dayton Avenue Tower	6th Telegrapher-Clerk-Towerman	1.6375
Los Angeles Firestone Pk.	1st Telegrapher-Clerk	1.6225
Los Angeles Freight	Printer Supervisor	1.83
Los Angeles Freight	Printer Machine Operator-Clerk	1.71
Los Angeles Freight	Printer Machine Operator-Clerk	1.71
Los Angeles Freight	Printer Machine Operator-Clerk	1.71
Los Angeles Freight	Printer Machine Operator-Clerk	1.71
Los Angeles Yard	1st Telegrapher-Clerk-PMO	1.71
Los Angeles Yard	2nd Telegrapher-Clerk-PMO	1.71
Los Angeles Yard	3rd Telegrapher-Clerk-PMO	1.71
Los Angeles Yard	Printer Machine Operator-Clerk	1.71
Los Angeles Yard	Printer Machine Operator-Clerk	1.71

tion pertinent to the normal functioning of the Mechanical and Operating 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 overtime rate claimed—see Awards 7094, 7222, 7239, 7242 and 7316, to cite a few.

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: All five claims are based upon telephone conversations between carmen and dispatchers and conductors and dispatchers reporting on cars which required repairs and affirmation that repairs had been made. The dispatchers are not employees covered in the Telegraphers' Agreement.

Petitioner contends that these were communications of record which should have been transmitted and received by employees covered by the Agreement. Carrier contends that the conversations "involved picking up of cars that had been set out as bad order and had been repaired, and did not involve or contravene any provision of the Telegraphers' Agreement."

The record shows that Car Repairmen telephoned Chief Train Dispatchers or Assistant Train Dispatchers reporting repairs on bad cars and the location of such cars. The Chief Train Dispatcher or Assistant Chief Train Dispatcher gives direction for the movement of such cars. The conversations upon which the claims are predicated were such messages which reported completion of repairs and the location of the cars. The communications did not affect the movement or the operation of trains. They did not affect the safety of persons or property.

While defective cars may affect the safety of persons and property, not all messages concerning the repair of such cars immediately affect the safety of persons and property. A message advising of a defective rail ahead, a stalled train, or any other hazard which could affect the safety of persons and property either on a moving train or a stalled train, may be such a communication of record. Each set of circumstances must be separately examined to determine if the communication affects the movement or operation of a train or the safety of persons and property.

The mere fact that a message is reduced to writing does not, by itself, constitute a communication of record. There is no evidence in the record to justify a finding that the messages upon which the claims are based are such communications of record which give the employees under the Telegraphers' Agreement exclusive right to relay them.

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 Carrier did not violate the Agreement.

AWARD

Claims 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.