

Award No. 12616
Docket No. TE-12318

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 violated the parties' Agreement at Napa Junction and at Martinez, California, when on September 18, 1958, it required or permitted employes not covered by the Telegraphers' Agreement to transmit and/or receive a message of record over the telephone.

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

(a) Ann Barnes, regular third shift telegrapher at Lombard, California, for one special call.

(b) L. A. Purmont, regular third shift telegrapher Martinez, California, for one special call.

CLAIM NOS. 2 and 3

1. The Carrier violated the parties' Agreement at El Paso, Texas, and at an "On Line Point" when on June 16, 1959, Signal Supervisor M. C. Fulks, transmitted a message of record over the telephone to his secretary in El Paso, Texas.

2. The Carrier shall, because of the violation set out above, compensate Telegrapher G. M. Seery, (SW) El Paso, Texas, idle on his rest day, a day's pay (8 hours); and Telegrapher M. L. Peer, Deming, New Mexico, idle on her rest day, a day's pay (8 hours), 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 the time the agreement was made. It is clear that when this Scope Rule containing reference to telephone operators was adopted, the parties understood that this term referred only to the type of telephone operator positions then in existence which handled "telegrams" by telephone and did not refer to employees engaged in using the telephone in handling information of the type involved in this claim as an incident to their primary duties.

In addition, Petitioner's General Chairman cited Rules 2, 16, 17 and 20.

Inasmuch as no provision of the current agreement allocates this work to telegraphers, Rule 2 (CLASSIFICATION OF EMPLOYEES RATING AND FILLING OF POSITIONS), Rule 16 (NOTIFIED OR CALLED), Rule 17 (SENIORITY AND SENIORITY LISTS), and RULE 20 (GENERAL TELEGRAPH OFFICES) obviously have no application.

In connection with the various rules referred to above, it will be noted they are all general rules and none deal in any particular with the subject in dispute. It will further be noted that there is no evidence of any kind that the carrier has ever agreed in any way to utilize telegraphers in connection with the work of other employees as in this case, but on the contrary this is clearly a case in which the use of other employees in accordance with long-standing practice is not only proper but entirely separate and apart from any agreement obligations the Carrier has ever assumed with the Petitioner.

The facts in this claim readily establish that the telephone conversations involved in this claim 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 Signal Department 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; additionally, even if the Signal Supervisor had desired to send a telegram from a blind siding such as Ulmoris (a station where no positions covered by current agreement are assigned), such a telegram could have been phoned to any open telegraph office, and no provision of the agreement would have required that the same be relayed through two telegraph offices (Deming and El Paso).

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:

CLAIM NO. 1

A Signal Maintainer at Napa Junction telephoned the following message to a ticket clerk at Martinez:

"PG&E knocked down one pole and busted wires. Temporary repairs made. Located at Cabral Ranch, Duhig Road, 200 feet west of crossing Napa Junction-Santa Rose line."

The Signal Maintainer asked the ticket clerk to relate this information to the lineman.

This is not a communication of record. It is not concerned with the movement or operation of trains. Neither does it deal with the safety of passengers and property. Almost all signal equipment, directly or indirectly, involve a measure of safety of passengers and property. But not all defects of signal equipment are of immediate concern for such safety. The application of this principle must be on a case by case basis.

The telephone conversation upon which this claim is based is informational only.

CLAIMS NOS. 2 and 3

A Signal Supervisor telephoned the following message to his secretary:

"CTC extended from Ulmoris to East end of Lisbon effective 9:15 A. M. date."

The record shows that the information contained in the telephone conversation was prepared in a telegram under the signature of the Division Superintendent and addressed to the General Manager and Chief Engineer. The telegram was transmitted by an employe in El Paso, covered in the Telegraphers' Agreement.

The telephone conversation was informational. The message was transmitted by an employe entitled to that work. There is no merit to the claim.

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 the Carrier did not violate the Agreement.

AWARD

Claims 1, 2 and 3 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.