Award No. 12621
Docket No. TE-13099

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:

1. Carrier violated and continues to violate the parties' Agreement when, on June 27 and 30, and July 7, 1960, and dates subsequent thereto, it required or permitted an employe not covered thereunder to perform work which is exclusively accruable to employes under the Scope Rule.

2. Carrier shall pay J. Y. Wray eight hours' pay at pro rata rate for the violation on June 27, 1960, and N. C. Stringer eight hours' pay at pro rata rate for the violations on June 30 and July 7, 1960.

3. Carrier shall pay a like amount to the occupant of the regularly assigned positions at "UN" Tucson, Arizona, on assigned rest days, when similar subsequent violations occur.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties to this dispute, bearing an effective date of December 1, 1944, reprinted to include revisions as of March 1, 1951, and subsequently amended, is by reference offered in evidence in this claim.

The issue giving rise to the filing of claims is shown below, as quoted from the claim letter filed on August 24, 1960, by District Chairman Wells with Superintendent Kirk:

"On June 27, 1960, at 3:17 P.M. and 3:18 P.M. the Assistant Chief Train Dispatcher, performing service on newly created telegrapher's position, Tucson, Arizona, handled the following messages of record with Agent W. A. Burgess, Curtiss, Arizona, on the telephone:

substantially correct." The above quoted conversations were presented to Carrier by Petitioner's District Chairman and later by the General Chairman.

At the time when these conversations took place, employes covered in the Telegraphers' Agreement were assigned to the Tucson office.

Carrier's position is best presented by its Assistant Manager of Personnel in a letter to the General Chairman dated March 20, 1961. He said, in part:

> "This case was discussed with you and Mr. Fisher in conference on March 8, 1961.
>
> As stated to you in conference, this was simply a case where the Assistant Chief Dispatcher called the Agent at Curtiss on the telephone and secured information as to what cars were moving to Benson and in turn passed information to trick dispatcher for issuance of pickup message for movement from Benson through regular channels. No provision of the Telegraphers' Agreement contemplates that the telephone conversation here involved be handled by a telegrapher."

We do not agree with Carrier's position. The telephone conversations were not alone in the nature of information. They were communications of record and have to do with the operations of trains. The Assistant Chief Train Dispatcher at Tucson asked for and received car numbers, the product in the cars and their destinations. The transmitting of this kind of messages is work which belongs to employes covered in the Telegraphers' Agreement. Since such employes were assigned to the Tucson office, they should have been used to relay the messages to the Agent at Curtiss. The claim has merit. See Awards 8663 and 11207 on the same property. Denial Awards 5866, 10492, and 10493, also on the same property and cited by Carrier are not applicable. The telephone conversations are not identical with those involved in this dispute.

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 violated the Agreement.

AWARD

Claim 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 12621, DOCKET TE-13099 (Referee Dolnick)

This award is palpably erroneous. To say that the transmitting of this kind of message is work which belongs to employes covered by the Telegraphers' Agreement "when the parties have not so provided in their Agreement, is to engage in judicial legislation which this Board has no auothrity to do" (**Award 12530** — Seff).

The finding that the transmitting of this kind of message is work which belongs to employes covered by the Telegraphers' Agreement is not only contrary to the facts of record, but is contrary to the position vigorously taken by the employes in **Award 8663** which is cited as the basis for the finding. In that case a clerk phoned information regarding cars to be picked up to the chief dispatcher. The employes there contended that the information should have been phoned **to the dispatchers** by a Telegrapher, basing their claim on alleged past practices and specific work assignments of the Telegraphers at the point from which the clerk had phoned. They argued that the **dispatchers** had always received such information by phone from the Telegraphers, and their sole complaint was that a clerk instead of a Telegrapher had phoned the information to the dispatchers. Throughout their handling of that case they vigorously noted the consistent practice whereby dispatchers received such information by phone, and they never question the complete propriety of that practice. Obviously, to the extent that **Award 8663** is material in this case, it indicates that the dispatchers were entitled to do the phoning involved in this case, and Telegraphers had no right thereto whatever.

The only authority other than **Award 8663** cited in support of this erroneous decision is **Award 11207** which is clearly not in point, for it is based on the express holding that a line-up and an OS had been transmitted by phone. We are admittedly not concerned with a line-up or an OS in this case. We are concerned with information as to available traffic, information which was obtained by the dispatchers for their own use in performing their own functions. There is absolutely no authority for the proposition that Telegraphers have any exclusive right to do such phoning instead of the dispatchers.

In prior awards this Board has consistently ruled that the rights of dispatchers, chief dispatchers and assistant chief dispatchers to do telephoning in connection with their other duties is governed by practice on the particular property. Even Referee Carter, who is the author of **Award 4516** on which the employes have so heavily relied in this case, recognized the principle that practice on the specific property must be recognized as controlling in such a case. In **Award 6996** (Carter), Carrier abolished a Telegrapher's position and "transferred the work of the position to the Chief Train Dispatcher and to Trick Train Dispatchers" who were not covered by the Telegraphers' Agreement. Referee Carter ruled that the Telegraphers had no exclusive rights to the work because:

> ". . . Apparently they have acquiesced in its performance by Train Dispatchers since 1911. Historically and traditionally the work has been that of the Train Dispatchers in the Nashville Train Dispatcher's office. By their own actions and by their own words over a period of thirty-five years or more, they have treated the disputed work as that

of Train Dispatchers. Tradition has fixed the status of the parties to this dispute. We must conclude that the parties through the years intended to limit any exclusive claim to the disputed work on the part of the Telegraphers. We adopt the reasoning contained in Award 4922. A denial Award is required."

Commencing with **Award 700** (rendered without a referee and without a dissent and followed in our subsequent awards), and continuing to our most recent awards, this Board has recognized the fact that dispatchers and chief dispatchers may have extensive rights to handle recorded communications by telephone. Our awards uniformly recognize that a long-established practice of allowing dispatchers to handle any type of communications' work that is not reserved to Telegraphers by express provision in their Agreement is binding upon the parties and this Board: **700** (no referee), **4922** (Boyd), **6996** (Carter), **10237** (Carey), **11708** (Dolnick), **12384** (Engelstein).

The correct rule was well stated by Referee Dolnick in **Award 11708**, which likewise involved telephoning by a chief dispatcher:

> "The messages telephoned by the Yardmaster to the Chief Dispatcher were not train orders and are not, therefore, covered by paragraph (b) of Article XXXIV. [Train Order Rule.]
>
> It is a well established principle of this Division that since the Scope Rule of the Agreement does not define the work of the employes, it is necessary to ascertain the historical, traditional and customary practice.
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> . . . The record fails to show by a preponderance of evidence that the transmission of messages by telephone was historically, traditionally and customarily the exclusive work of the telegraphers."

The employes significantly do not deny the statement made in Position of Carrier to the effect that the procedure followed in this case "is a procedure that has been followed throughout the life of the current Agreement and for many years prior thereto."

On a record such as we have before us, every authority that has previously considered the question, including the Referee who wrote this palpably erroneous decision, has ruled that the Telegraphers have no exclusive right to the work and their claim to such right must be denied.

We dissent.

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