Award No. 12623
Docket No. TE-13469

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. The Carrier violated the terms of an Agreement between the parties hereto when on February 1, 1961, it permitted or required Clerk H. B. Cochenour in the Chief Train Dispatcher's Office at Dunsmuir, California, an employe not covered by said Agreement, to transmit and/or receive messages over the telephone from the Telegrapher at Redding, California.

2. The Carrier shall, because of the violation set out in paragraph one hereof, compensate J. R. Moore, Wire Chief-Telegrapher-Clerk, P. M. O. Dunsmuir, California, a call in accordance with the provisions of Rule 16 Section (a).

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, 1959), and as otherwise amended.

At page 48 of said Agreement is listed the positions covered thereby at Dunsmuir, California, on the effective date thereof. The listing for your ready convenience reads:

Location	Title of Position	Hourly Rate of Pay
Dunsmuir Yard	1st Teleg-Clk-PMO	$1.68
Dunsmuir Yard	2nd Teleg-Clk-PMO	$1.68
Dunsmuir Yard	3rd Teleg-Clk-PMO	$1.68

The above listing shows that telegraph (telephone) communications positions are maintained by Carrier on an around-the-clock basis at Dunsmuir. That employes within the coverage of the parties' Agreement were available, ready and willing to perform the work in question. That these covered employes were prevented from so doing by an employe of another class and craft acting in accordance with the Carrier's instructions.

A review of the record shows that the Organization has not demonstrated that the work in dispute is exclusively theirs."

Petitioner would make it appear that telephone conversations by the employes of the other craft involved in this claim constitute an innovation in use of the telephone by those employes and that such conversations supplemented telegrams which had previously been handled by telegraphers. The fact is that telephoning by employes of other crafts in connection with their own duties as involved in this claim has been established practice on Carrier's lines for many, many years. At the time the telephone conversations occurred from which this claim arose, no change in any way whatever was made in practices and procedures followed in telephoning information of the nature of that forming basis for the within claim.

The facts in this claim readily establish that the telephone conversations, subject of the claim in this docket, did not involve or contravene any provisions of the current agreement. Said conversations were purely an exchange of information pertinent to the normal functioning of the railroad generally and have been accepted and recognized on this property for as long as telephones have been a regular media of communication. Whether or not the employes represented by the petitioning organization in this claim enjoy an exclusive right to the operation of the telephone on this and other railroad properties is an issue that has confronted this Division on many occasions *and the Division has consistently held that they do not.*

The telephone conversations subject of this claim were in keeping with long standing practice on the property before and after the effective date of the current agreement. Not only is the practice entirely proper, but Petitioner has never produced one shred of evidence as to any agreement having been entered into by the Carrier allocating the duties in dispute to employes represented by Petitioner.

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: A Clerk in the Chief Train Dispatcher's Office at Dunsmuir, California, not covered in the Telegraphers' Agreement, telephoned the Telegrapher at Redding, California, and asked for the number of cars to be picked up at Redding and their direction. The Telegrapher at Redding advised the Clerk at Dunsmuir as follows:

"There were six loads, 1 empty, 395 tons, to be picked up and moved east."

On the basis of this information, the Chief Train Dispatcher directed the Telegraph Office at Dunsmuir to transmit the following messages to the train at Gerber, California:

"Dunsmuir, California
February 1, 1961

DR DUNS 1
BG 394 GCS C&E KFX 1 GERBER

KFX 1 PICK UP REDDING FIRST OUT ON STORAGE 6 LDS 1 MTY 395

TONS FOR EAST D-42

WRP."

Carrier agrees that, subjectwise, the version of the conversation between the Clerk at Dunsmuir and the Telegrapher at Redding is substantially correct.

This was a communication of record. It had to do with the operation of a train. The transmitting of this kind of message is work which belongs to employes covered in the Telegraphers' Agreement. There were such Telegrapher employes assigned at Dunsmuir. They should have been used to transmit the message to the Telegrapher at Redding.

One of the conditions of a collective agreement is to preserve the work of the craft to the covered employes. If Carrier is permitted to use employes other than those covered by the Telegraphers' Agreement to transmit communications of record, whether by telegraph, telephone, or other means, then the fundamental purpose of the Agreement is nullified. It is conceivable that the use of other employes may be more economical, or more efficient. But, that is no justification for their use. Carrier may acquire the right to use such employes only by modifications and amendments to the agreement arrived at through collective bargaining, as provided in the Railway Labor Act.

There is 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 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 12623, DOCKET TE-13469 (Referee Dolnick)

What we have said in our Dissent to **Award 12621** is pertinent and by this reference is made a part hereof.

No authority is cited for the unwarranted conclusion that Telegraphers exclusively were entitled to do the telephoning which was done by a clerk in the dispatcher's office. There is no showing in this record that Telegraphers have handled this telephoning. Carrier's repeated assertions that such telephoning has been done by clerks traditionally are not refuted in the record.

In **Award 10954** (Dolnick) the Board ruled:

> "In the absence of a clear definition of the Scope Rule, history, tradition, custom and practice must determine what work was reserved exclusively to the Telegrapher, and, further, in such a case, **the burden of proof rests on the employes.** Awards 10673 (Ables), 10425 (Dolnick), 10385 (Dugan), 10581 (Russell), 10604 (Dolnick), 6824 (Shake) and others." *

Also, in **Award 11707** (Dolnick) the Board ruled:

> "**OPINION OF BOARD:** The issue here is whether telegraphers have the exclusive right to telephone information pertaining to reconsignments or diversions of freight traffic.
>
> Like many other agreements between Labor Organizations and Carriers, the Scope Rule in the Agreement here involved does not describe the work or duties of the covered positions. Under these circumstances we need to ascertain the traditional, historical and customary **past practice on the property.**"

No valid reason has been given and no valid reason can be given for the Referee's failure to apply this perfectly sound past practice test in the instant case. If he had applied that test, he would necessarily have denied the claim.

We dissent.

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

*Emphasis ours unless otherwise indicated.