

Award No. 12641
Docket No. TE-13398

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM:

(1) Carrier violated its Agreement with the employes represented by The Order of Railroad Telegraphers when at 5:17 P. M., March 23, 1961, it caused, required or permitted an unidentified member of the train or engine crew on No. 31 to perform the work of a telegrapher at Stroud, Oklahoma, a station at which a telegrapher is employed, but who was not on duty.

(2) Carrier shall now compensate Mr. W. J. Loveall, agent-telegrapher, Stroud, Oklahoma, an amount equivalent to a two hour call under the Agreement, a total of \$7.70.

EMPLOYES' STATEMENT OF FACTS: Stroud, Oklahoma, is located approximately half-way between Tulsa, Oklahoma and Oklahoma City on Carrier's Southwestern Division. The relative locations of the stations on the particular district involved are as follows:

Stations	Miles from St. Louis, Mo.
Tulsa	424.6
Sapulpa	438.5
Kellyville	446.8
Bristow	460.2
Depew	467.7
Stroud	478.7
Davenport	486.4
Chandler	495.1
Warwick	503.9
Wellston	506.7
Luther	515.8
Jones	525.4
Oklahoma City	541.8

This dispute represents an effort of the Organization to gain by Board award something which it has been unable to secure through negotiations.

The Scope Rule of the current Telegraphers' Schedule is not one of the type that has been construed by this Division as being general in nature, but, rather, one that specifically enumerates the work inuring to the employes covered thereby, and sets out work therein by special reference. The complained-of incident was not in violation of any rule of the Telegraphers' Agreement. At the most, the alleged incident amounted to no more than conversation. The alleged conversation was nothing more than an exchange of informative information to expedite the handling of trains and for the betterment of the service. This Carrier has expended large sums of money to provide and to improve its communication facilities, and for this Division to hold that a train dispatcher may not use such facilities to converse with others concerning matters of mutual interest would seriously impair its effectiveness, and hinder efficiency by creating needless and unnecessary delay to trains.

It has often been said that not all communication work is reserved to telegraphers. See Awards 603, 652, 658, 700, 1983, 4208, 4280, and 4265.

The factual evidence does not warrant a sustaining award, and this Division is requested to so find. The Board is requested to find in favor of the Carrier and deny the Employes' claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose by reason of a communication between an unidentified member of train No. 31 and the dispatcher at Tulsa. At 5:17 P. M., March 23, 1961, the train dispatcher, by use of the radio telephone, called train No. 31 and stated: "No. 31 please state your position." Whereupon, an unidentified train or engine crew member replied, also by radio-telephone: "We are coming into Stroud now." The dispatcher thereupon issued a train order directing a train to "wait" for No. 31.

The Organization contends that the communication by the non-telegrapher crew member was a train report and, therefore, a violation of the agreement. The Scope Rule and memorandum interpreting same reads as follows:

"ARTICLE I. (1)

Employes, except train dispatchers, who are required by direction of officer in charge to handle train orders, block or report trains, receive or forward written messages by telegraph, telephone or mechanical telegraph machines (defined as telegraphers, telephone operators, block operators, operators of mechanical telegraph machines, agent-telegraphers, agent-telephoners), agents, assistant agents, ticket agents, assistant ticket agents and car distributors, listed in appended wage scale, also tower and train directors, towermen, levermen, staffmen, are covered by this Agreement and are hereinafter collectively referred to as employes, and when so referred to, all are included."

The following Agreement is also currently in effect:

"MEMORANDUM OF AGREEMENT
as to application of
Paragraph 2 of Article I, also Article XIII,
Telegraphers' Schedule Agreement Dated
May 16, 1928, as Amended,
With Respect to Emergency Telephones.

1. The term 'emergency telephone' is construed for the purpose of this agreement to mean a telephone ordinarily kept under lock and key at fixed locations for use in emergencies, and commercial telephones when used in lieu of an emergency telephone.

2. The term 'emergency' is construed to mean train accidents, fires, washouts, floods, personal injuries, main line obstructions, engine failures, train equipment failures, broken rails and failures of block signals or other fixed signals, which could not have been anticipated by dispatcher when train was at previous telegraph office and which would result in serious delay to trains.

3. If emergency telephones are used contrary to provisions of Paragraphs 1 and/or 2 of Article I of Telegraphers' Schedule Agreement, except in case of emergency as defined in Paragraph Two (2) of this Agreement, employes covered by Telegraphers' Schedule Agreement shall be paid as follows, provided claims are submitted within thirty (30) days of date of occurrence:

(a) At stations or locations between stations where there is no occupied position covered by Telegraphers' Schedule Agreement, one day's pay to senior idle extra telegrapher of that date.

(b) At stations where agent-telegrapher or telegraphers are employed and not on duty, a call as defined in Article II, Paragraph Seven, to agent-telegrapher or telegrapher whose hours of service converge nearest with the time violation occurred.

(c) At stations where no telegraph service is maintained but there is a non-telegraph agent, or there are non-telegraph towermen employed, non-telegraph agent shall receive telegrapher's rate applicable at such station for the month in which such violation occurs, or towerman whose hours of service converge nearest with the time violation occurs shall receive telegrapher's rate applicable at such tower for the month in which such violation occurs.

4. It is agreed following usage of emergency telephones shall not be considered a violation of this agreement or Telegraphers' Schedule Agreement:

(a) Installation of emergency telephones at any place in absolute permissive block territory or in centralized traffic control territory and their use by trainmen or engineers to obtain verbal authority to pass automatic block or interlocking signals in a restrictive position.

(b) Use of emergency telephones by trainmen or enginemen at junction points to report arrival or departure or request permission to occupy main track.

Dated at St. Louis, Missouri, this 25th day of July, 1942."

The Carrier contends that there is no violation for three reasons:

- (1) The Organization has not proved that the unidentified Member was required or directed by the officer in charge to make such report.
- (2) The communication was not a train report encompassed by the scope rule.
- (3) The media used by the communicants is not encompassed by the scope rule.

The Organization, however, points out that the report was required by the dispatcher, an agent of the Trainmaster by virtue of Carrier's Book of Rules 850 and 851. Further, Rule 222 directs that:

"Operators must promptly record and report to the dispatcher the arrival and departure of all trains and the direction of extra trains."

In the absence of any proof to the contrary, there is a presumption that the unidentified member is acting within the scope of his authority if in accordance with the Carrier's rules. We, therefore, hold that the communication involved was required or directed by the officer in charge.

We also agree that the communication involved was a train report. We have previously held that a communication may be a train report encompassed by the scope rule without meeting the formalities of an OS. Carrier argues that such report was not needed, but does not deny that the dispatcher requested such information, nor that such report was made, nor that the ensuing train order resulted in part from receipt of such information.

Carrier next contends that the above quoted scope rule only encompasses communications via telegraph and telephone, and does not encompass the communication involved here, claiming that this was a radio communication. However, the Organization points out that this is a radio-telephone communication, rather than only a radio communication. Here, the dispatcher's regular telephone line between Stroud depot and Tulsa carried the communication and that the radio leg of the communication was limited from the train at Stroud to the Depot at Stroud. Under these circumstances, we hold that the report was by "telephone" as encompassed within the meaning of the above quoted Scope Rule.

Paragraph 3 (b) of the above quoted agreement provides that compensation shall be made for such violations in the amount claimed by claimant herein.

For these reasons, the claim should be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1964.

**CARRIER MEMBERS' DISSENT TO AWARD 12641,
DOCKET TE-13398**

The award is erroneous as to each major point decided.

The first of Carrier's three defenses is that the Organization cannot establish that the complained of incident was required by the direction of officer in charge. On this point the award finds:

"... Rule 222 directs that:

'Operators must promptly record and report to the dispatcher the arrival and departure of all trains and the direction of extra trains.'

In the absence of any proof to the contrary, there is a presumption that the unidentified member is acting within the scope of his authority if in accordance with the Carrier's rules. We, therefore, hold that the communication involved was required or directed by the officer in charge."

Since Rule 222 addresses itself to "operators" who are on duty, and it requires them to "promptly record and report" arrival and departure of trains, a mere radio conversation by a trainman of which no record is made is certainly not work performed "in accordance" with this rule, and it is manifestly erroneous to say that anything appearing in this rule warrants the presumption that the trainman's conversation in this case was required by authority of the officer in charge.

Carrier's next defense is that this communication is not a train report. The award rejects this defense on the basis of a finding that:

"We also agree that the communication involved was a train report. We have previously held that a communication may be a

train report encompassed by the scope rule without meeting the formalities of an OS. Carrier argues that such report was not needed, but does not deny that the dispatcher requested such information, nor that such report was made, nor that the ensuing train order resulted in part from the receipt of such information."*

The Referee has here adopted the disputed and unsupported allegations of the employees. To establish that the dispatcher did actually use the information allegedly received in the radio conversation, the employees give us only their unsupported assertions. They ridicule Carrier's Statement that the information was not required. At pages 2 and 3 of their rebuttal statement they assert:

"Carrier, also at its Page 3, stated that:

'Had the information . . . been needed or required, the officer in charge would have required the Agent-Telegrapher to remain on duty to report train No. 31. However, such information was neither needed, required, nor made a matter of record.'

This is a strange assertion in the face of the record, because the evidence is to the effect that the whereabouts of No. 31 was both needed and required in order to issue the train order placed at Davenport. The report was made a matter of record by the dispatcher as basic justification for the advancing move of No. 31 against No. 10 by means of the train order. The dispatcher had to know the exact location of No. 31 because Davenport was the last point that this train order could be issued."

The dispatcher had all of the information he needed from other sources, according to Carrier. The alleged "evidence" here referred to by the employees is not in the record before us. In this record, to which we are confined, there is no competent evidence to prove that the dispatcher needed this information, that he acted on it, or that he reported it, as alleged by the employees. Certainly, if this information had been required as a basis for the train orders which the dispatcher subsequently issued, it would have been recorded, and the record could have been proved.

Carrier's third defense is that the Scope Rule defines the work of Telegraphers in terms of certain types of instruments, namely, "telegraph, telephone or mechanical telegraph machines", and this Board is not authorized to add additional instruments, such as radio. As was held in **Award 31 of Special Board of Adjustment 226**:

"The radio is not mentioned in Rule 1 (a). We are forbidden to include it."

At the insistence of the employees, this Board has ruled that the involved Scope Rule is specific and lists the work reserved to Telegraphers. This being the case, work not listed is not reserved. Awards 11699 (Engelstein), 11165 (Sheridan), 10860 (Kramer), 8172 (Smith), 4439 (Wenke), **Award No. 31, Special Board of Adjustment No. 226**.

*Emphasis ours unless otherwise indicated.

In apparent recognition of the principle just noted, the award does not hold that a radio conversation would come within the coverage of the rule, but it rules that the trainman who allegedly engaged in a conversation with the dispatcher engaged in a "telephone" conversation because the conversation only went part of the way by radio wave and was carried by telephone lines for the remainder of the distance. The trainman admittedly carried on his part of the conversation at the far end of the "radio leg" and necessarily used the radio. We see no logic whatever in the Referee's conclusion that the radio conversation of the trainman was converted into a telephone conversation by the mere fact that his radio conversation was relayed part of the distance by telephone wire.

We dissent.

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