

Award No. 12703
Docket No. TE-11350

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

CASE NO. 1

(a) Carrier violated the Scope Rule (Rule 1) and the Seniority Rule (Rule 18) of The Telegraphers' Agreement when at 8:57 P.M., Friday, April 11, 1958, it caused, required or permitted Signal Maintainer, L. A. Meeks, an employe not covered by the Telegraphers' Agreement, to perform the work of transmitting communications of record by telephone from Toccoa, Georgia.

(b) Carrier shall compensate Telegrapher C. M. Mitchell the regular assigned Clerk-Telegrapher, Toccoa, Georgia, for one call (two hours and forty minutes) under Rule 10 at the time and one-half rate of her position for April 11, 1958. The regular rate of pay on this date was \$2.27 per hour. Total amount claimed for the violation stated is \$9.08.

CASE NO. 2

(a) Carrier violated the Scope Rule (Rule 1) and the Seniority Rule (Rule 18) of the Telegraphers' Agreement when at 6:45 P.M., Friday, April 25, 1958, it caused, required or permitted employe T. K. Brown, Conductor on work extra, an employe not covered by the Telegraphers' Agreement, to perform the work of transmitting communications of record by telephone from Cornelia, Georgia.

(b) Carrier shall compensate Telegrapher M. D. Blackstone, senior idle extra telegrapher, Charlotte Division seniority district, idle or otherwise entitled, one day's pay (eight hours) at the pro rata rate of pay of \$2.27 per hour. Total amount claimed, for the herein stated violation, is \$18.16. (The rate of \$2.27 per hour would have been the clerk-telegraphers rate of pay at Cornelia, Georgia on April 25, 1958 had the Carrier not abolished it.)

That the use of booth telephones by line of road employes has been an accepted practice of long standing, carrier cites the letter of October 19, 1929 appearing on pages 42-43 of the printed agreement, dealing with (a) conductors copying train orders by use of telephone and (b) installation of telephone booths. That letter was in effect twenty years prior to the negotiation of Rule 31. The understanding therein reached was that, in copying train orders by telephone, the conductor would communicate with the dispatcher through the operator. The letter had no reference to, and placed no restriction whatsoever on, other telephone communications by conductors and other line of road employes which did not involve the copying of train orders. From 1929 to the effective date of the current Telegraphers' Agreement of September 1, 1949, and continuing to the present date, conductors and other line of road employes have regularly used company booth telephones in connection with the duties and responsibilities of their positions. In addition, since the effective date of Rule 31, if a conductor copies a train order at a station where an operator is employed but not on duty, the operator at such station is allowed a minimum call payment, regardless of whether the conductor copies the order direct from the dispatcher or through an operator who is on duty at another station. If a conductor copies a train order by telephone at a point where an operator is not employed, no penalty accrues. This is why the parties referred to the letter in the "Note" under Rule 31.

The evidence of record discloses that there was no violation of the agreement in either Case 1 or Case 2 as alleged by the employes, and that the work in question is not reserved exclusively to telegraphers. For the reasons set forth herein, carrier respectfully requests that the claim be denied in its entirety.

OPINION OF BOARD: The two claims submitted both allege violations of the effective Agreement because of calls made from wayside booth telephones conveying messages to Telegraphers to be transmitted to various officers and supervisors of the Carrier.

Claim No. 1 concerns a telephone call made from near Toccoa, Georgia, by a Signal Maintainer, who after investigating a malfunctioning block light, gave the telegrapher on duty at Greenville and Gainesville a message of his findings for transmission to the Signal Superintendent, Division Superintendent and Chief Dispatcher at Greenville.

Claim No. 2 alleges a violation because a work train conductor used a wayside telephone booth at Cornelia, Georgia to transmit a message through the telegraph operator at Greenville to the Chief Engineer at Charlotte, reporting a breakdown of a tie unloading machine.

The messages in neither case concerned the control of movement of trains. In each case, the content was confined to the incident or events dealt with and within the responsibilities of the respective senders. In each case, the messages were routed through telegraphers and not phoned in directly to the receivers.

The Carrier contends that it has been the practice for years for messages and reports of the type involved to be handled in the same manner as they were handled here. The Petitioner has not disputed or disproved this contention.

We conclude that the requirement for successful support of such a claim as this, under the general Scope Rule in this Agreement, has not been met. That is, there has been no showing that this work has been performed exclusively by telegraphers through tradition, custom and practice.

Accordingly, the claim cannot be sustained.

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 Employees involved in this dispute are respectively Carrier and Employees 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of July 1964.