

Award No. 13730
Docket No. TE-13820

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
(Western Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Panhandle & Santa Fe Railway, that:

1. The Carrier violated the Agreement between the parties when on June 7, 1960, it required or permitted an employe at Dumas, Texas, not covered by said Agreement, to perform telegraphic communications work covered thereby; and

2. The Carrier shall now be required to pay L. D. Spears the equivalent of a "call" payment at the established rate of his regularly assigned position.

EMPLOYEES' STATEMENT OF FACTS: Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

The Carrier maintains an agency station at Dumas, Texas, and employs an Agent-Telegrapher on first shift.

At 6:43 A.M., June 7, 1960, the Carrier required or permitted Track Inspector Neighbors, an employe not covered by the Telegraphers' Agreement, while at Dumas, Texas, to telephone the following message to the Train Dispatcher at Amarillo, Texas:

"Please cancel my order effective between MP 47 and MP 48. We will not work today."

The Employes filed claim in behalf of an employe covered by the Telegraphers' Agreement which was subsequently appealed to the highest officer designated by the Carrier to handle such disputes and was denied.

The dispute herein has been handled in accordance with the terms of the Agreement between the parties and as provided by the Railway Labor Act,

When a collective bargaining agreement is consummated and existing practices are not abrogated or changed by its terms, those existing practices are just as valid and enforceable as if authorized by the agreement itself, (Awards 1257, 1568, 3461, 41054); and particularly when, as here, an existing practice is sought to be changed.

Claimants here have not conclusively established their right to perform the work in question to the exclusion of others similarly employed, either through custom and practice on this property or under the terms of the contract. Thus, in effect, this Board is being asked to grant something the agreement does not provide. The rule that we are without authority so to do is too well established to require further comment." (Emphasis ours.)

A denying award in the instant dispute is obviously in order on the basis of the conclusions expressed in Awards Nos. 5564 and 8538 which were incidentally reaffirmed by Awards Nos. 9005, 9006, 9454, 10516, 10683, 10776, 10817 and others.

In conclusion, the Carrier respectfully reasserts that the claim of the Employes in the instant dispute is entirely without merit or support under the governing Telegraphers' Agreement and should, for the reasons heretofore stated, be denied in its entirety.

OPINION OF BOARD: The Carrier maintains an agency station at Dumas, Texas, and employs an Agent-Telegrapher on first shift. At 6:43 A. M., June 7, 1960, Track Inspector Neighbors, an employe not covered by the Telegraphers' Agreement, while at Dumas, Texas, telephoned the following message to the Train Dispatcher at Amarillo, Texas:

"Please cancel my order effective between MP 47 and MP 48.
We will not work today."

The Record reveals that on the evening of June 6, 1960, a track gang was working in the vicinity of Dumas. Foreman of the crew informed the dispatcher at Amarillo of working plans for June 7, 1960 and the dispatcher issued Train Order No. 203, addressed to all trains on the Dumas District, to be effective 8:00 A. M., June 7, 1960, as follows:

"Eight naught one 8:01 A. M. to two naught one 2:01 P. M. approach gang between MP 47 and 48 between Bautista and Dumas prepared to stop until proper proceed signal received. Speed limit through gang 15 MPH.

TWG

Completed 12:03 A. M. (June 7, 1960)

Operator Henson"

On the morning of June 7, 1960, due to inclement weather the gang would not work that day. Track Supervisor Neighbors contacted dispatcher at Amarillo from Dumas by telephone, as stated above. No message was filed confirming this conversation. The Claimant, worked his regular 8:00 A. M. to 5:00 P. M. assignment on the date involved and was not on duty at the time the call was made.

The Organization contends the Agent at Dumas, Texas, was available and should have been called to perform this communication and train order

work; that the Track Inspector Neighbors is not an employe covered by the Telegraphers' Agreement and when required and/or permitted to perform Telegraphers' work, the Telegraphers' Agreement was violated; that authority for a call payment in behalf of Agent at Dumas is supported by Section 1 of the Scope Rule, Article II Section 5, Article III Section 3, Article XIII Section 1, as well as the Seniority rules of the Telegraphers' Agreement; that Communications of record is work belonging exclusively, traditionally, and historically to Telegraphers.

Carrier asserts the telephone conversation in the instant claim did not constitute the transmission of a matter of record, but consisted only of a telephone conversation between two employes of the Carrier; that the Employes subject to the Agreement do not now and never did have an exclusive or monopoly right to the use of the telephone; that the conversation complained of did not violate any Agreement rule cited by the Organization.

It is agreed by the parties that the basic issue in TE-13820, is the same as in TE-12789 and TE-13824.

In the record, Carrier admits that Track Inspector Neighbors did communicate with the Amarillo dispatcher on June 7, 1960, however, Carrier asserts said communication was just conversation. A letter dated November 22, 1960, addressed to the Organization from the Carrier supports the Organization position that the conversation was more than "just conversation" as Carrier made the following statement regarding this incident:

* * * * *

"... However, due to weather conditions the gang was prevented from working the following morning (June 7th). Track Supervisor C. D. Neighbors, desiring to get the slow order cancelled before the Dumas District trains left Amarillo, went to the station at about 6:40 A.M. on June 7th and gave information to the dispatcher to the effect that the gang would not work that day.

... the telephone conversation between the track supervisor and train dispatcher simply consisted of a request that the latter be informed of the need for the cancellation of the slow order. . . ." (Emphasis ours.)

Though no message was filed, the slow order cancellation was a message of record, clearly affecting the movement of trains on the Dumas District. Said communication caused Train Order No. 218 to be issued, annulling Train Order No. 203 which permitted all trains during the entire day and night of June 7, 1960, to operate at normal speeds over the Dumas District, without said order, the trains approaching the work gang had to be prepared to stop or proceed on proper signal at a speed limit of 15 MPH through the work gang.

The Third Division, in resolving disputes arising out of the use of the telephone by employes other than those subject to the Telegraphers' Agreement, has held that the use of a telephone to transmit or receive train orders, messages or reports of record, dealing with the movement of trains, is work belonging exclusively to Telegraphers. See Awards 10364, 10767, and 10777 which so held between these same parties.

The Board finds that the telephone call made by Track Supervisor Neighbors, not covered by the Agreement, concerning a slow order cancellation

was a message of record and affected the movement of Trains on the Dumas District.

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 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1965.

**CARRIER MEMBERS' DISSENT TO AWARD 13730,
DOCKET TE-13820
(Referee Mesigh)**

WE DISSENT.

**W. M. Roberts
R. A. DeRossett
W. F. Euker
C. H. Manoogian
G. L. Naylor**