

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**P. M. Williams, Referee**

**PARTIES TO DISPUTE:**

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

**CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Minneapolis and St. Louis Division of the Chicago and North Western Railway, that:

1. Carrier violated and continues to violate Rule 1 (Scope) of the parties' Agreement, when on February 13, 1961, and each day thereafter, Monday through Friday, five days per week, it caused, required or permitted a track force employe not covered thereunder to perform work of receiving, copying and delivering train lineups at Middle Grove, Illinois, which work is solely and exclusively reserved to employes covered by said Agreement.

2. Carrier shall compensate Agent-Telegrapher S. F. Morse, his relief or successor, assigned to Middle Grove, Illinois, for a call (Three hours' pay) for each date said violation occurs, commencing February 13, 1961.  
[Carrier's File 6-24-3.]

**EMPLOYEES' STATEMENT OF FACTS:** The Agreement between the parties to this dispute, reprinted in booklet form, bears an effective date of September 1, 1955. Said Agreement, by this reference, is made part of this submission.

At page 68 of the booklet Agreement, under Rates of Pay, the following hourly rated positions at Middle Grove, Illinois are listed as shown below:

Station	Position	Hourly Rate	Overtime Rate
Middle Grove	Agt. Teleg.	1.949	2.9235
	2nd Teleg.	1.841	2.7615

Mr. S. F. Morse is the occupant of the Agent-Telegrapher position, which is in the five day category. Prior to February 13, 1961, Mr. Morse was assigned from 7:00 A.M. to 3:00 P.M., Monday through Friday, with Saturday and Sunday rest days. Commencing February 13, 1961, the hours of Mr. Morse's

telegrapher was employed could properly call the telegrapher at that point to get a lineup without going to the telegrapher himself to personally secure the lineup. This apparently the Board recognized as proper, although for some reason if the same telephone call were made to a telegrapher at an adjacent station, the section foreman would be incapable of getting such lineup over the telephone. One analyzing this distinction can find no possible basis on which to support it.

Attention is also called to the difficulty in which the Board found itself in Award 4516. After admitting that under the Scope Rule the work involved in the case was not reserved exclusively to telegraphers but at the same time attempting to follow the work to preserve it to telegraphers without support of rules, the Board became faced with the fact that it was preserving to telegraphers work which they had never had. It pointed out that at Sauquoit there had never been a telegrapher employed and therefore it could not preserve to telegraphers at that point work which they had never had. In attempting to support the claim therefore and at the same time distinguish the case at Sauquoit, the Board said:

"Clearly, a reservation of work rule cannot create new work or extend itself beyond that from which it has its origin."

Applying this principle in the instant case, it cannot be disputed but that on this property at points where telegraphers are not employed, or points where telegraphers are employed and not on duty where it is necessary for maintenance of way employes or others to secure lineups, it has been the practice for many years, specifically covered by instructions in effect to such employes, that they secure a lineup from either the train dispatcher or a telegrapher on duty at another point. In the circumstance of this case this Board cannot, under the pretense of "preserving work" to telegraphers, either create new work for them or extend the work theoretically belonging to them to work which they have never had.

The Board cannot therefore sustain the claim under the pretext of "following the work," for the telegraphers never had the work.

The carrier does not believe it is essential to discuss all of the awards issued by this Board denying similar claims. The matter is, however, probably best set forth in Award 9502 where, in a part of its opinion denying the claim the Board stated:

"The issue herein is whether the applicable Telegrapher Agreement was violated when a Section Foreman not covered by that Agreement received lineups, at a station where a telegrapher was assigned but not on duty, from a telegrapher at an adjacent station. The present Referee participated in the rendition of Awards 7970, 8141 and 8146. The principles applied in those Awards apply to the present case, and past practice on the property accordingly is of paramount importance in the disposition of the case. Also see Award 8314. As to past practice on the property, the Record supports the Carrier."

The carrier submits that the claim in this case should be denied in its entirety.

**OPINION OF BOARD:** The issue to be resolved in this dispute is whether the applicable agreement was violated when Carrier directed that a track force employe receive, copy and deliver train lineups on days subsequent to

February 13, 1961, when a telegrapher, though assigned to the point, was not on duty.

Numerous awards of this Division have embraced essentially the same subject matter as is now before us. The basis for decision in the preponderance of those awards has been the past practice on the particular property. This record contains unrefuted probative evidence that on a date approximately ten years prior to the institution of this claim, the Carrier's then highest officer handling claims, authorized the payment of two hour calls to a member of this Organization for five consecutive days for an identical fact situation. Such voluntary action on the part of the Carrier's representative, when also linked with later payments of a similar nature, constrain us to a finding that the agreement was violated.

To the extent of the named Claimant's loss of earnings by his not receiving calls to receive, copy and deliver the train lineups at Middle Grove, Illinois on the days when violations occurred, we will sustain the claim.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 violated the Agreement.

#### **AWARD**

Claim sustained in accordance with the above Opinion.

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

**ATTEST:** S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1965.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**  
**(Supplemental)**

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**INTERPRETATION NO. 1 TO AWARD NO. 13799**  
**DOCKET NO. TE-13325**

**Name of Organization:**

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

**Name of Carrier:**

**CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The Organization asks, "Was it the express intention of the Board, to amend Part 2 of the Employees' Statement of Claim to exclude 'his/Morse's/relief or successor' (as contended by the Carrier) or did the Board construe "S. F. Morse, his relief or successor", as the named claimants within the context of its generally worded paragraph (as contended by the Employees)?"

The crux of the query posed by the Organization can probably better be stated, for interpretive purposes here, as being, "Did the Board intend to make an award for Claimant Morse's loss of earnings only, or did it intend that Morse's relief or successor should also recover loss of earnings during the period of the violation?"

We are of the opinion that when the facts of this case are considered in the light of the particular, and contemporary, circumstances surrounding them, the conclusion was correctly reached that only the named claimant of the award should receive compensation. To us no ambiguity exists in the Award. The named claimant was S. F. Morse. In the instant case it was not intended, that Morse's relief or successors should also be compensated.

Referee P. M. Williams, who sat with the Division as a neutral member when Award No. 13799 was adopted, also participated with the Division in making this interpretation.

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

**ATTEST: S. H. Schulty**  
**Executive Secretary**

**Dated at Chicago, Illinois this 23rd day of March 1967.**