

Award No. 13915

Docket No. TE-13154

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, St. Paul, Minneapolis & Omaha Railway, that:

1. Carrier violated the terms of the parties' Agreement when it required or permitted an employe not covered thereunder to perform communication service of record by use of the train dispatcher's telephone at Lake Crystal, Minnesota, after the working hours of the agent-telegrapher assigned thereto.

2. Carrier shall now be required to compensate H. E. Anderson, occupant of the agent-telegrapher position at Lake Crystal—or his successor—on the basis of a "call" (two hours at time and one-half rate) for each date said violation occurred, or may subsequently occur, commencing October 27, 1960.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties to this dispute, reprinted in booklet form, bears an effective date of March 1, 1956. Said Agreement, and subsequent amendments thereto, is by reference offered in evidence and support of this claim.

The claim involves a charge of Agreement violation by reason of a train conductor OS'ing his train at Lake Crystal, Minnesota, on written instruction of the Carrier, when he reached this point, after the agent-telegrapher had terminated his assignment for the day.

The OS was performed on the company dispatcher telephone. On days when the train reached Lake Crystal before the agent-telegrapher went off duty, the agent-telegrapher performed this service as part of his regular duties.

Lake Crystal, Minnesota, is a junction point on the CStPM&O Railway main line which runs between Mankato, Minnesota and Sioux City, Iowa.

Sandbeck further set forth that this practice had been going on for the year and one-half that he had been second trick operator at Mankato, that he had never requested this information nor additional information either for his own or for anybody else's use, and he was under the impression that the calling from Lake Crystal was strictly voluntary. He also set forth that the head brakeman again calls from the West Connection telephone at Mankato.

In conclusion the carrier wishes to point out that there is no provision in any agreement between this carrier and The Order of Railroad Telegraphers which establishes that the handling of communications of record is work reserved exclusively to telegraphers. Even, however, were this Board to construe the controlling agreement as so reserving such work, no communication of record is involved in the instant case. The agreement of April 15, 1942 clearly contemplates and permits the use of telephone by train crews in circumstances such as those involved in the instant case. The General Chairman's contention that this telephone conversation constituted an "OS" of the train is contrary to operating rules and practice on this property. The instructions given on November 12, 1960 about picking up Diesel Unit 95 at Lake Crystal was entirely consistent with and covered by the agreement of April 15, 1942 as conversation about work to be performed which was permissible. The awards referred to by the carrier of Special Board of Adjustment No. 132, and Award No. 9953 of the Third Division and awards cited therein show conclusively that the use of the telephone is not reserved exclusively to telegraphers, and Award 9953 clearly shows that the claim here before this Board has no validity.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arose when the conductor on Train No. 46, who in accordance with Carrier's instructions addressed to him at Elmore stating that he was to call the dispatcher from Lake Crystal daily, spoke through the train dispatcher's office with the operator at Mankato, Minnesota, concerning loads, empties, tonnage, and expected departure time of his train.

H. E. Anderson, regularly assigned agent-telegrapher at Lake Crystal not on duty at the times Conductor No. 46 made these calls, contends that he was available to perform this work of OSing (reporting) this train. He points out that the Scope of the Agreement states that communications of record is work belonging exclusively to members of the telegrapher craft. He also maintains that the instructions Carrier sent to the conductor that he call the dispatcher each day before leaving Lake Crystal definitely points to the fact that the calls were not conversations of the nature permitted under Appendix H of the Agreement, but were for the purpose of transmitting information necessary for the movement of trains. Moreover, he emphasizes that since the conductor was requested to supply departure time, this information was recorded, and constitutes a complete OSing, a communication of record. In addition, Claimant alleges that the refusal of Carrier to permit a joint check of the train sheets in the dispatcher's office for the dates of claim in order to ascertain if the information was a matter of record is evidence that such calls were recorded.

In its denial Carrier takes the position that the Scope does not specifically reserve the work in question to telegraphers, that the information did not constitute a communication of record, and that the character of telephone conversation engaged in by train crews is permissible under Appendix "H" (a) of the Agreement. Furthermore, it asserts the existence of a practice of long standing for the conductor on Train No. 46 to call Mankato from Lake Crystal.

In the determination of this dispute, important is the question of whether OSing was actually performed and as a communication of record is work reserved exclusively to the employees covered by the Telegraphers' Agreement.

Although the record is clear that the conductor advised the operator at Mankato as to loads and empties on his train, the parties disagree whether the information exchanged concerning departure time constituted OSing. The conductor furnished an expected departure time from Lake Crystal, but Claimant assumes that this estimated time was recorded and governed the movements of trains. These conversations were for the purpose of aiding the yard forces in planning their work. Such conversation about work to be performed is permissible under Appendix "H" paragraph (a) of the Agreement, and did not affect train movements. Furthermore, the actual departure time is information essential for the completion of OSing, and is recorded after train departure.

With reference to Claimant's contention that Carrier's refusal to permit a joint check of the train sheet in dispatcher's office is proof that the calls were recorded, we find that such check is not mandatory under the rules and that inability or unwillingness to consent to a joint check is not a basis for such conclusion. The burden of presenting evidence to prove its allegation rests with Claimants.

The Scope Rule lists positions covered by the Agreement and although it refers to train orders or communications of record in relation to radio operators, this rule does not exclusively reserve to the telegrapher-agent the work in question. Moreover, Carrier has shown that it has been the past practice for about twenty-three years to have train service employees perform this work. In fact, in a letter dated May 8, 1961, the General Chairman, in referring to the method of reporting trains at Lake Crystal after hours, admits that this practice existed for at least four years.

For the above stated reasons, we hold the Agreement was not violated and the claim is denied.

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 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 Agreement of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1965.