

Award No. 14111
Docket No. TE-14105

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Burlington and Quincy Railroad, that:

1. Carrier violated the Agreement between the parties when on January 5, 9, 10, 12 and 15, 1962, it required or permitted Bridge Foreman E. C. Ward, an employe not covered by the Agreement, to transmit communications of record by telephone from Bridge M.P. 11.92 to the relay office at Hannibal, Missouri.

2. Because of being deprived of work to which entitled, Carrier shall compensate extra employes G. S. Bennett for January 5, 1962, F. L. Conover for January 9, 1962, R. R. Ford for January 10, 1962, J. L. Hutson for January 12, 1962 and K. Johnson for January 15, 1962, each in the amount of a day's pay of eight (8) hours at the rate of \$2.446 per hour.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective May 1, 1953, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Bridge 11.92 is situated 11.92 miles north of the Union Station at St. Louis, Missouri, and about 4.7 miles north of North St. Louis, Missouri on the Carrier's line between North St. Louis and Hannibal, Missouri.

This dispute arose out of Carrier's action of requiring or permitting Bridge Foreman E. C. Ward to transmit messages of record from Bridge 11.92 to the Relay Office at Hannibal, Missouri, to be retransmitted to various addressees. The messages transmitted by Bridge Foreman Ward, on the dates indicated, are as follows:

“(from) Bridge 11.92
North St. Louis
January 5, 1962

To—

J. W. Davidson, Chicago
A. E. Reynolds, Ottumwa
Freight Agent, Mt. Pleasant, Iowa

has not explained, however, why a B&B Foreman out in the country has to give his message business to one operator rather than another, or even why, with two operators on duty, one at Hannibal and one at North St. Louis, there is any reason contractually or otherwise for claiming that he should have called five different extra men who were on their rest days to travel anywhere from 25 to 250 miles so they could send the messages that were transmitted by an operator on duty and under pay. There is no provision in the agreement that would offer any explanation for the position of Petitioner in this case. Neither is there any provision in the agreement, or even in common sense, that would support these wholly unwarranted claims.

In conclusion, the Carrier respectfully asserts that:

1. The messages here involved are not communications of record as described in Rule 1(b) of the agreement, nor are they messages of the type that affect the control of transportation.
2. Awards of the Third Division cited herein have consistently and unwaveringly denied identical claims in numbers well over 100.
3. The messages were transmitted by a telegraph operator and received at their destination by a telegraph operator.
4. Petitioner admits that it would have been proper for the B&B Foreman to phone his messages to North St. Louis, even though he was miles away from that point also.
5. The claimants were all on their rest days on the dates involved, and regularly assigned operators were on duty and under pay at both North St. Louis and Hannibal, and claimants would not have been called in any event to handle the messages involved.

If proper consideration is given to the facts, circumstances and rules here involved, there can be no decision except denial of the claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner contends that this dispute arose out of Carrier's action requiring or permitting the Bridge Foreman to transmit messages of record from Bridge 11.92 to the Relay Office at Hannibal, Missouri, to various addressees over a telephone which had been established at Bridge 11.92; that by reason thereof Carrier had violated the Scope Rule of the Telegraphers' Agreement.

Carrier avers, however, that the information transmitted by the Bridge Foreman was merely routine, incidental to his duties, conveyed by means of a portable telephone, and were not communications of record within the Scope of the Telegraphers' Agreement.

An examination of the Record indicates that all of the messages transmitted over the telephone at Bridge 11.92 by the Foreman were in the category of conversations about work; none of them affected the movement or control of transportation nor the safety of persons.

The Scope Rule involved herein is general in nature, and, consequently, *past practice is controlling*, and it is incumbent on the Petitioner to estab-

lish that the work involved belonged exclusively to employes covered by the Telegraphers' Agreement.

In Award 4208 (Robertson) (and many other awards) this Board held that the use of the telephone on a railroad is not an exclusive function of employes covered by the Telegraphers' Agreement. The mere fact that someone reduces the substance of a telephone call to writing does not necessarily make it a message of record as that phrase is commonly understood in railroad operation. See Award 10525 (Carey).

Messages sent by the Bridge Foreman were not similar in character to communications which affect the operation of trains such as train orders and other messages, nor to reports that affect the safety of persons and property and by their very nature should be made of record. Because of the nature of the messages transmitted to the telegrapher by the Foreman and there being a failure of proof on the part of the Petitioner as to whether Carrier required them to be made of record, we must conclude that the claim herein involved is not supported by the Record. See Awards 5181, 5182 (Boyd), Award 10700 (Hall), Award 12613 (Dolnick), and Award 12383 (Engelstein).

For the foregoing reasons the Board is impelled to a conclusion that the Agreement was not violated.

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 not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January, 1966.