



Award No. 14244

Docket No. TE-13869

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Percelson, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly 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:

The Carrier on or about July 3, 1960 initiated and put into effect a program on a system wide basis of removing a large portion of communication work, namely, transmitting and receiving messages and reports of record, which had from time immemorial been performed by employes covered by the scope of the Telegraphers' Agreement. It is now requiring or permitting employes not coming within the scope of said Agreement to perform, by means of the telephone in lieu of telegraph, printer and other mechanical telegraph machines, communication service which is reserved to employes of the classes enumerated in the Agreement. In doing this, the Carrier violated, and continues to violate the provisions of the Telegraphers' Agreement, as is shown in the violations listed herein. This is a continuing claim for all violations subsequent to the dates shown herein.

VIOLATION No. 1: At 11:30 P.M., Sunday, April 2, 1961, Clerk Warren Dover, Air Line Junction, North Carolina, transmitted by telephone a message of record to Night Chief Dispatcher R. C. Cash, Greenville, South Carolina.

For Violation No. 1, Carrier shall now compensate Telegrapher D. L. Garmon, Air Line Junction, North Carolina, account message transmitted by a clerk; also compensate Telegrapher D. A. Williams, Greenville, South Carolina, account message received and recorded by night chief dispatcher. Neither the clerk nor night chief dispatcher have any right to work of the Telegraphers' Agreement.

VIOLATION No. 2: At 12:30 A.M., Tuesday, April 4, 1961, Clerk Warren Dover, Air Line Junction, North Carolina, transmitted

by telephone a message of record to Night Chief Dispatcher R. C. Cash, Greenville, South Carolina.

For Violation No. 2, Carrier shall now compensate Telegrapher F. H. Dalton, Air Line Junction, North Carolina, account message transmitted by a clerk; also compensate Telegrapher B. J. Revis, Greenville, South Carolina, account message of record received and recorded by night chief dispatcher. Neither the clerk nor night chief dispatcher have any right to work of the Telegraphers' Agreement.

VIOLATION No. 3: At 1:30 A.M., Wednesday, April 12, 1961, Night Chief Dispatcher Ivie, Greenville, South Carolina, transmitted by telephone a message of record to Clerk J. G. Spoor, Air Line Junction, North Carolina.

For Violation No. 3, Carrier shall now compensate Telegrapher D. L. Garmon, Air Line Junction, North Carolina, account message of record received and recorded by Clerk Spoor; also compensate Telegrapher D. A. Williams, Greenville, South Carolina, account message of record transmitted by Night Chief Dispatcher Ivie. Neither the clerk nor night chief dispatcher have any right to work of the Telegraphers' Agreement.

For each claimant above named, a basic day's pay, eight hours at the established telegrapher's rate of pay at each respective location is claimed. The established rate at Air Line Junction, North Carolina, is \$2.46 per hour, or \$19.68 for basic day; at Greenville, South Carolina, the rate is \$2.5650 per hour, or \$20.52 per basic day.

The above in behalf of extra idle telegraphers named or in behalf of senior idle extra telegrapher entitled and considered qualified to perform the work.

Compensation, as in keeping with the Agreement and circumstances involved, shall be allowed to the senior idle telegrapher so entitled, extra or otherwise, for all subsequent violations as this claim is a continuing claim.

EMPLOYEES' STATEMENT OF FACTS: The Carrier, on or about July 3, 1960, instituted and put into effect a program on a system-wide basis of removing a large portion of the communication work, which includes the transmitting and receiving of messages, orders and reports of record from the Telegraphers under this Agreement. The Carrier is requiring and permitting employees not under the scope of the Agreement to perform by means of the telephone in lieu of telegraph, printer and other mechanical telegraph machines, communication service which has been reserved under the Scope Rule of this Agreement to employees in the classes enumerated in the Agreement.

ORT Exhibits 1 through 9, attached hereto, are copies of the correspondence exchanged in the handling of this claim on the property.

In ORT Exhibit No. 1, the three violations complained of are set forth. In Violation No. 1, at 11:30 P.M. on Sunday, April 2, 1961, Clerk Warren

founded, erroneous charges and generalities, even making the astonishing and incomprehensible assertion 'we deny that they were telephone conversations.' In each of the three instances cited, it is obvious that someone overheard a normal telephone conversation, then briefed it into what you term a message by adding the date, Chief Dispatcher or Yardmaster as addressee, and 'signed' by Terminal Trainmaster Curlee or Chief Dispatcher Lutz. These are complete distortions designed to mislead. In each instance, it was simply a matter of one person calling another on the telephone and getting or furnishing some information or data, in line with the accepted and agreed-to practice that has been in existence ever since we have had telephones.

With respect to 'Exhibit No. 1, dated February 12, 1962' and 'Exhibit No. 2, dated April 12, 1962', which were attached to your June 12 letter and referred to in the last paragraph thereof, listing alleged violations on October 15, 22, 28, November 12, 13, 19, 20, 26, 27, Dec. 3, 4, 30, 31, 1961; Jan. 14, 23, Feb. 7, 8, 12, 14, 15, 17, 22, 24, 26; March 4, 6, 7, 15, 18, 19, 21, 25, 26, 29; April 2, 1962. If by 'indicating the employees adversely affected', including others than the four original claimants, you are attempting to assert monetary claims in their behalf for the dates listed, I advise you that such claims are barred by reason of non-compliance with Article V, Section 1 (a) of the August 21, 1954 Agreement. Further, rather than being 'in support' of your position that this is a continuing claim, the two so-called exhibits are conclusive evidence to the contrary. Had this been an actual continuing claim at the outset (which it is not) within the meaning of Article V, Section 3 of the 1954 Agreement, the initial presentation would have been sufficient, and it would have been unnecessary and superfluous to file subsequent identical claims. The facts that you attempted to do so on June 12 constitutes an admission that it is definitely not a continuing claim.

The advice contained in my letter of December 8, 1961 and stated orally to you in conference on April 20, 1962 is reaffirmed in its entirety."

OPINION OF BOARD: This claim involved three alleged violations on three specific dates, to wit, April 2, 1961, April 4, 1961 and April 12, 1961, on the Charlotte Division of the Carrier's main line. In each case it is claimed that employees not covered by the Scope Rule of the Telegraphers' Agreement had in violation of the Agreement been required or permitted to perform certain work which is reserved to employees of the categories enumerated in the Agreement.

The Organization alleges, among other things, that these alleged violations are the result of and part of a program initiated and put into effect on or about July 3, 1960, on a system-wide basis "of removing a large portion of communication work, namely, transmitting and receiving messages and reports of record, which had from time immemorial been performed by employees covered by the scope of the Telegraphers' Agreement. It is now requiring or permitting employees not coming within the scope of said Agreement to perform, by means of the telephone in lieu of telegraph printer and other mechanical telegraph machines, communication service which is reserved to employees of the classes enumerated in the Agreement * * *."

The Organization claims for each of the claimants named "a basic day's pay, eight hours, at the established telegrapher's rate of pay at each respective location."

The Organization further claims that compensation "shall be allowed to the senior idle telegrapher so entitled, extra or otherwise, for all subsequent violations, as this claim is a continuing claim."

The Scope Rule in the Agreement is of the general type. It does not define or describe work, but only lists by title the classes of employees covered by the terms and provisions of the Agreement.

This Board has consistently, in interpreting such general type rules, applied the principle of determining whether or not the work in dispute has been performed exclusively by claimants through practice, custom and tradition. We have also held that the burden of proving such exclusive right, through practice and tradition, is on the Organization. See Awards 9953, 10425, 10918, 11592, 10237, and 11908.

In determining the disputes before us, we consider as to whether or not train orders are involved under Rule 31 or whether or not the work involved constitutes a "message or report of record."

An examination of the record in this case discloses that the Organization does not contend, nor has it attempted to prove by any evidence that any of the messages involved in this dispute are or were train orders.

We next consider as to whether or not the work involved constitutes a "message or report of record" and whether or not the Organization has established by tradition, custom and practice that the employees coming under the Agreement have been exclusively assigned to all the work claimed.

The Organization in its Ex Parte Submission states "by practice from time immemorial; by General Order No. 27 during the period of federal control in World War I; by the Scope Rule negotiated into the Telegraphers' Agreement between this Organization and the Carrier, * * * this work is reserved to the employees holding seniority under the Telegraphers' Agreement."

Carrier denies that the work involved by tradition, custom and practice belongs exclusively to the employees under the Agreement.

The Organization in support of its position that the work involved has been done by others, which had been customarily and traditionally performed by claimants, is in the form of exhibits (1-9). These purport to be copies of communications to and from various personnel of the Carrier.

The Carrier does not deny that these messages were sent, but contends that they were from its supervisory and administrative personnel, seeking information and the giving of instructions.

We have examined the exhibits and conclude from such examination that they do not constitute persuasive evidence that work which had been

customarily, traditionally and exclusively reserved to telegraphers had been shifted to others.

An examination of the messages involved shows that some of them by necessity had to be and perhaps were inscribed, retained and for some lesser or greater period, preserved in tangible graphic form.

The parties are in disagreement with reference to the controlling question as to whether or not the disputed work had been exclusively assigned, by custom or tradition, to the telegrapher employees. There is no competent evidence in the record for resolving these opposing contentions of fact.

The Organization has failed to meet its burden of proving exclusive rights to the performance of this work by tradition, custom and practice, which it is required to do when a claim, such as the one before us, is made under the general type Scope Rule which is contained in the governing Agreement.

Similar disputes, involving the same parties and the same issues, have previously been decided by this Board. See Awards 11812, 12699, 12700, 12701, 12703, 12704, 12705, 12706, 12707, 12708, 12709, 12710 and 12711. Accordingly, the claims must be denied.

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 there is no evidence that the Agreement was violated.

AWARD

The claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March 1966.