

Award No. 14533
Docket No. TE-14184

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

CASE NO. 1

1. Carrier violated the Agreement between the parties when on January 6, 1962, it required or permitted B. A. Lashley at Coosa Pines, Alabama, G. W. Hardy at St. Ives, Alabama, and A. Aspinwall at Chelsea, Alabama, all employees not covered by the Agreement, to handle communications of record.

2. Because of these violations Carrier shall compensate the three senior idle extra telegraphers on the Western Division on January 6, 1962, each in the amount of a day's pay of eight (8) hours at the minimum telegraphers' rate on the seniority district. If no idle telegraphers on January 6, 1962, on the seniority district, Carrier shall compensate the corresponding number of idle telegraphers observing a rest day on January 6, 1962, each in the amount of a day's pay of eight (8) hours.

CASE NO. 2

1. Carrier violated the Agreement between the parties when on March 29, 1962, it required or permitted Section Foreman W. L. Manning, an employee not covered by the Agreement, to handle communication of record at Douglas, Georgia, at a time the Clerk-Telegrapher was not on duty at that station.

2. Because of this violation, Carrier shall compensate W. W. Mims, Clerk-Telegrapher at Douglas, Georgia for a call of two (2) hours' pay at the time and one-half rate.

CASE NO. 3

1. Carrier violated the Agreement between the parties when on April 5, 1962, it required or permitted Foreman W. O. Batte, an employe not covered by the Agreement, to handle communications of record at Inverness, Florida, at a time the Agent-Telegrapher was not on duty at that station.

2. Because of this violation Carrier shall compensate W. K. Jenkins, Agent-Telegrapher at Inverness, Florida for a call of two (2) hours' pay at the time and one-half rate.

CASE NO. 4

1. Carrier violated the Agreement between the parties when on May 10, 1962, it required or permitted Signal Maintainer N. D. Ford, Jr., an employe not covered by the Agreement, to handle communication of record at Moncks Corner, South Carolina, at a time the Agent-Telegrapher was not on duty at that station.

2. Because of this violation Carrier shall compensate F. L. Baggatt, Agent-Telegrapher at Moncks Corner, South Carolina for one call of two (2) hours' pay at the time and one-half rate.

CASE NO. 5

1. Carrier violated the Agreement between the parties when on April 23, 1962, it required or permitted Welder G. W. Carter, an employe not covered by the Agreement, to handle communication of record at Abba, Georgia.

2. Because of this violation Carrier shall compensate A. K. Connor, J. A. Boulware, Jr., A. K. Meeks, V. B. Lummus or G. Burt, idle employes, seniority preference, in the amount of a day's pay of eight (8) hours at the minimum telegraphers' rate of the Western Division.

CASE NO. 6

1. Carrier violated the Agreement between the parties when on May 1, 1962, it required or permitted Section Foreman W. C. Gibbs, an employe not covered by the Agreement, to handle communication of record at Atlanta, Georgia.

2. Because of this violation Carrier shall compensate A. K. Connor, V. B. Lummus or G. Burt, idle employes, seniority preference in the amount of day's pay of eight (8) hours at the minimum telegraphers' rate on the Western Division.

CASE NO. 7

1. Carrier violated the Agreement between the parties when on June 6, 1962, it required or permitted Section Foreman W. L. Manning, an employe not covered by the Agreement, to handle communication of record at Purser, Alabama.

2. Because of this violation Carrier shall compensate A. K. Connor, A. K. Meeks, V. B. Lummus or G. Burt, idle employes, seniority preference, in the amount of a day's pay of eight (8) hours at the minimum telegraphers' rate on the Western Division.

CASE NO. 8

1. Carrier violated the Agreement between the parties when on July 11, 1962, it required or permitted Roadmaster E. B. Taylor, an employe not covered by the Agreement (a Carrier Officer), to handle communication of record at Betts, Georgia.

2. Because of this violation Carrier shall compensate A. K. Connor, J. A. Boulware, Jr., A. K. Meeks, V. B. Lummus or G. Burt, idle employes, seniority preference, in the amount of a day's pay of eight (8) hours at the minimum telegraphers' rate on the Western Division. Claimant to be determined by joint check of the Carrier's Record.

CASE NO. 9

1. Carrier violated the Agreement between the parties when on July 17, 1962, it required or permitted Signal Supervisor R. B. Cook, an employe not covered by the Agreement, to handle communication of record at Bolen, Georgia.

2. Because of this violation Carrier shall compensate A. K. Connor, A. K. Meeks, V. B. Lummus or G. Burt, idle employes, seniority preference, in the amount of a day's pay of eight (8) hours at the minimum telegraphers' rate on the Western Division. Claimant to be determined by joint check of the Carrier's records.

CASE NO. 10

1. Carrier violated the Agreement between the parties when on September 5, 1962, it required or permitted Section Foreman A. Aspinwall, an employe not covered by the Agreement, to handle communication of record at Watkins, Alabama.

2. Because of this violation Carrier shall compensate A. K. Connor, J. A. Boulware, Jr., A. K. Meeks, V. B. Lummus or G. Burt, idle employes, seniority preference, in the amount of a day's pay of eight (8) hours at the minimum telegraphers' rate on the Western Division.

CASE NO. 11

1. Carrier violated the Agreement between the parties when on April 17, 1962, it required or permitted Conductor E. C. Rabon of Work Extra 149, and on April 23, 1962, it required or permitted Section Foreman R. Dyal, employes not covered by the Agreement, to handle communications of record at Talladega, Alabama, at a time the Supervisory Agent was not on duty at that station.

2. Because of these violations Carrier shall compensate B. N. McCrary, Supervisory Agent at Talladega, Alabama, a minimum call payment for each day, April 17 and 23, 1962.

CASE NO. 12

1. Carrier violated the Agreement between the parties when on May 22, 1962, it required or permitted Section Foreman A. Aspinwall, an employe not covered by the Agreement, to handle communications of record at Talladega, Alabama, at a time the Supervisory Agent was not on duty at that station.

2. Because of this violation Carrier shall compensate B. N. McCrary, Supervisory Agent at Talladega, Alabama, a minimum call payment for May 22, 1962.

CASE NO. 13

1. Carrier violated the Agreement between the parties when on June 26 and 27, 1962, it required or permitted Section Foreman A. Aspinwall, an employe not covered by the Agreement, to handle communications of record at Talladega, Alabama, at a time the Supervisory Agent was not on duty at that station.

2. Because of these violations Carrier shall compensate B. N. McCrary, Supervisory Agent at Talladega, Alabama, a minimum call payment for each day, June 26 and 27, 1962.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective November 1, 1939, as amended and supplemented, is available to your Board and by this reference, is made a part hereof.

There are thirteen separate claims involved in this dispute. Due to the similarity of the violations of the Agreement rules and the similarity of handling on the property, they are combined in this submission inasmuch as the rules involved are also identical.

The sole issue in this dispute is whether the Claimants had the contractual right to perform the work herein involved. The compensatory claims are only collateral issues in that the Carrier does not dispute the correctness or these claims once the substantive claims of violation are resolved. The facts of each case named in Statement of Claim are as follows:

CASE NO. 1

Until about 1955, Carrier maintained positions of Clerk-Telegraphers at Coosa Pines, Alabama and Chelsea, Alabama. At the time Carrier abolished those positions the hours of assignment of each was 8:00 A.M. to 5:00 P.M. (one hour off for lunch). During the many years these positions were in existence, the occupants thereof performed all communication work in handling messages, orders and reports of record at such stations during their regularly assigned hours, and in addition, oftentimes outside their regular assigned hours on a call or overtime basis. There has never been a position covered by the Agreement at St. Ives, Alabama.

At 2:30 P.M. on January 6, 1962, Apprentice Foreman B. A. Lashley, transmitted by telephone (company circuit), to the Agent at Pelham, Alabama, the following message:

CASE NO. 12

On May 22, 1962, A. Aspinwall, Section Foreman, called the telegrapher in Manchester, Georgia, from Talladega, Alabama, an agency station, and requested the telegrapher to communicate to the Chief Dispatcher a request lifting a conditional stop order and a request for placement of a conditional stop order.

CASE NO. 13

On June 26, 1962, A. Aspinwall, Section Foreman, called the telegrapher in Manchester, Georgia, from Talladega, Alabama, an agency station, and requested the telegrapher to communicate to the Chief Dispatcher a request lifting a slow order, and a request for the placement of a conditional stop order. There was no request on June 27, 1962.

The General Chairman of The Order of Railroad Telegraphers filed claims with the Division Superintendents on each of the dates listed above, alleging that the use of the telephone by Roadmasters, Section Foremen and other employes was a violation of the current working agreement effective November 1, 1939, as amended and supplemented. These claims were progressed through the prescribed channels and were at all times declined, as the action complained of is not, in Carrier's opinion, a violation of any rule of the agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute, involving thirteen separate claims which arose out of alleged occurrences at various locations on the Carrier's system in Alabama and Georgia, concerns the basic issue as to whether or not Carrier violated the Telegraphers' Agreement between the parties. In each case it is claimed that employes not covered by the Scope Rule of the Agreement had in violation of the Agreement been required or permitted to perform certain work which is reserved to employes of the categories enumerated in the Agreement.

There is no dispute as to the material facts encompassed in this dispute.

The Organization contends that various employes of the Carrier not covered by the Agreement handled the messages at the times, places and in the manner as set forth in its Ex Parte Submission, and that under the Agreement, by tradition, custom and practice the work involved belongs exclusively to the employes under the Agreement.

The Carrier does not deny that the messages in question were sent but does deny that the work involved by tradition, custom and practice belongs exclusively to the employes under the Agreement.

In examining the Agreement we find that the Scope Rule is of the general type. It does not define or describe work, but only lists by title the classes of employes covered by the terms and provisions of the Agreement. In interpreting such general type of rule, this Board has consistently 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 Organization must prove, by competent evidence, that the

telegraphers handled the type of messages in question to the exclusion of all other classes of employes.

In determining the disputes before us, we consider as to whether or not train orders are involved or whether or not the work involved constitute messages or reports 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 constitute messages or reports of record and whether or not the Organization has established by tradition, custom and practice that the employes coming under the Agreement have been exclusively assigned to all the work claimed.

The Organization in support of its position that the work involved has been done by others, which it claims had been customarily and traditionally performed by Claimants, is in the form of copies of communications to and from various personnel of the Carrier. In addition to copies of the communications, the Organization submits a statement showing that on numerous occasions the Carrier settled and/or compromised claims of a similar nature as the ones before us.

In Award 10525 (Carey, Jr.,) we said:

" . . . A significant element considered in determining if specific communication work is, or is not, properly reserved to telegraphers, is the question whether it is a communication relating to the control of transportation and if a record is required to be preserved. While telephone operators are mentioned in the Scope Rule it has been generally recognized that all messages or communications transmitted by telephone are not thereby included in the exclusive domain of telegraphers. Failure to record a message or report which should have been made of record would not alter the character of the work done insofar as the Scope Rule is concerned. On the other hand, a message telephoned by a clerk to a train crew, which does not affect the operation of trains as do train orders and other communications relating to or affecting the safety of persons and property and which by their very nature should be made of record, would not be exclusively reserved to telegraphers. Award No. 5182. 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."

In Award 5182 (Boyd) we said:

"We are here concerned with the transmittal of a message which is in the form of a notice that cars at McAllen are ready to be picked up for movement. There is no direction given as to where or by what route the cars are to be moved. The Carrier asserts that the messages are but substitutes for verbal directions that customarily are given when the train crew reached McAllen and the sending of such was for the convenience of the train crew . . ."

We have examined the messages listed by the Organization and observe from such examination that the messages transmitted by telephone contained

information related to the work for which the employe was responsible in the course of his regular duties. We are not persuaded that these telephone communications were messages of record even though 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. Considering the nature and purpose of these messages and considering that Carrier was not required by rules to keep records of this type of message, we hold that they are not messages of record and, therefore, not the exclusive work of telegraphers. To hold otherwise would limit the functioning of many employes in carrying out their respective duties and responsibilities.

This Board has held on numerous occasions that settlements of dispute on the property are not precedents in interpreting the Agreement between the parties. In many instances these settlements are compromises, and do not necessarily reflect the merits of the case.

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 employes. We find 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. Accordingly, the claims will 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 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 of the parties was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1966.