

Award No. 14936
Docket No. TE-13913

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY
(Eastern District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (Eastern Lines), that:

1. Carrier violated the Agreement between the parties when on September 22, 1961, it required or permitted Conductor Young, in charge of Train No. 154, to handle (receive, copy and deliver), Train Order No. 2, and accompanying clearance at Junction City, Kansas yard.

2. Because of this violation, Carrier shall be required to compensate H. W. Means, Ticket Agent, Telegrapher-Printer Mechanician, Junction City, Kansas, in the amount of one call for September 22, 1961.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective February 1, 1951, as supplemented and amended, is available to your Board, and by this reference is made a part hereof as though set forth herein word for word.

Junction City, Kansas, is located on the First Subdivision of the Kansas Division of the Carrier's lines, 47.1 miles east of Salina, Kansas, the western terminus of the Subdivision, and 139.5 miles east of Kansas City, Missouri, the eastern terminus. This territory is a part of the Carrier's main line between Kansas City, Missouri and Denver, Colorado. There is a branch line extending to the northwestward out of Junction City to Concordia, Kansas, which the Carrier identifies as the "Junction City Branch." Carrier maintains a rather large freight yard at Junction City, necessitated in large part, for the purpose of switching cars, the trains, to and from the Junction City Branch.

Carrier maintains round-the-clock telegraphy and/or train order service at Junction City with three positions covered by the Agreement at its yard office at that station. There is also a monthly rated Freight Agent at Junction City who is excepted from certain rules of the Agreement and is not

telephone offices where an operator is employed, and is available, or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call."

OPINION OF BOARD: The facts are not disputed. On September 22, 1961, a conductor handled a train order from a telephone located at the east end of the yard at Junction City, Kansas. Carrier employed telegraphers around the clock at Junction City. They worked in an office in the passenger station located about a mile and a half away from the telephone used by the conductor.

Rule 64 provides:

"RULE 64. TRAIN ORDERS

No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call." (Emphasis ours.)

On the property the Organization argued that the Scope Rule reserved to telegraphers the right to handle all train orders and that Rule 64 only reduced this right by allowing Carrier to use other personnel under stated circumstances. The Scope Rule is general, and we have held that it is incumbent upon the Organization to prove by history, custom and practice that it was so reserved for the Scope Rule to apply. Awards 10604, 13963 and others. The Organization did not sustain its burden of proving that it was reserved by history, custom and practice.

Rule 64 does reserve the right to handle train orders to telegraphers and train dispatchers "at telegraph or telephone offices where an operator is employed. . . ."

The vital question involved herein is whether this telephone was part of the office where a telegrapher was employed. If not, the claim must be dismissed.

What constitutes an office under Rule 64 is not a question free from ambiguity. The Organization argued that it is a settled question that an office means a station, and that a station includes all the territory within the yard limits. An examination of the awards does not lead to so categorical a conclusion. And, even if it were that an office was considered co-extensive with a yard on other railroads, we must be concerned with what the parties in our dispute intended the word to mean. Only if office and yard were synonymous can we say there is no ambiguity. Clearly, office and yard are not synonymous.

Where there is an ambiguity, such as we have here, it is proper to look to custom and practice to determine intent, for where there is doubt, the way parties show they interpret it is the best evidence of their intent. The evidence is undeniable that at this station conductors have used this telephone to handle train orders. If so, the parties have shown that they did not include this telephone as embraced within their concept of "office" under Rule 64.

There was additional evidence that at other points where telegraphers were not employed, other personnel handled train orders. In some such cases the Organization filed claims, but did not process them when Carrier denied them. While this is not unrefutable proof, it is persuasive under the circumstances.

In Award 9988 (Begley) on this railroad but under a different Agreement, a new yard office one and a quarter miles from the telegraph office was held to be an office where no telegrapher was employed and, hence, not subject to the Train Order Rule. In Award 10714, we refused to embrace the entire yard as constituting the telegraph office.

There are other awards which hold otherwise, such as Awards 12781 and 13314. Award 12781 involved the right of the Carrier to require a telegrapher to deliver a train order to the passenger station a mile away. There was no practice which showed their intent. Hence, this case is not applicable.

Award 13314 involved a different Rule.

In Award 8704 we held that the word "offices" meant not only the room where the telegraphers worked, but the entire station. It is not clear whether the reference was merely to a building, or was more extensive. In any event, a different rule was being interpreted.

Award 12371 depended upon tradition, custom, and practice. It involved a station where operators had been employed before it was closed.

In our case, custom, practice and tradition at this station showed that this telephone was not considered part of the office under Rule 64. The claim must, therefore, be 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 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 16th day of November 1966.

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