Award No. 15147
Docket No. TE-13823

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway, that:

1. The Carrier violated the Agreement between the parties when on June 3, 5, 12 and 17, 1960, it required or permitted employes not covered by said Agreement to perform telegraphic communications work covered thereby; and

2. The Carrier shall now be required to pay P. E. Brown the equivalent of a "call" payment at the established rate of his regularly assigned position on June 3, 12 and 17, 1960; and R. D. Derry the equivalent of a "call" payment at the established rate of his regularly assigned position on June 5, 1960.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

This dispute involves four separate claims which were filed by the Employes claiming violations of the Telegraphers' Agreement at various points on the dates listed in Item 1 of the Employes' Statement of Claim. For the purpose of enabling all concerned to identify each individual claim, should it be necessary to do so, the Employes will number each case consecutively and briefly state facts in connection with each claim.

Typical examples of the handling in dispute and the exchange of correspondence between the parties are reflected by Employes' Exhibits Nos. 1 to 12, inclusive, which are attached hereto.

The Employes filed claims in behalf of employes covered by the Telegraphers' Agreement which were subsequently appealed to the highest officer designated by the Carrier to handle such disputes and were denied. These disputes have been handled on the property as provided by the Agreement

Third: Even if the complained-of telephone conversation had constituted the transmission or copying of a message of record, and I do not agree that it did, the violation involved herein would have occurred at a blind siding, and your appeal claim in behalf of Telegrapher Brown is therefore improper for the reason that, in addition to not having been adversely affected by the handling complained of, he would only be entitled to penalty compensation in the event of a violation of Article XIII at Cadiz, where he was regularly assigned.

Yours truly,

/s/ L. D. Comer"

Claimant P. E. Brown was assigned as Telegrapher-Clerk at Cadiz from 4:00 P. M. to 12:00 Midnight, Wednesday through Sunday.

Subsequent to the Carrier's declination of each of the four (4) claims as heretofore related, the time limit for the appeal of those claims was, by mutual consent, extended for a period ending sixty (60) days following discussion of those claims in conference. A docket of claims, including the four (4) described herein, were discussed in conference by a representative of the Carrier and General Chairman Bobo on June 25, 26 and 27, 1962, during the course of which the Carrier's prior declination of each of those four claims was reaffirmed. The four claims were then consolidated and appealed to this Board as one dispute by President G. E. Leighty of the ORT in his letter of August 24, 1962 to Executive Secretary Schulty.

OPINION OF BOARD: Briefly, the facts in this case are, as follows — members of wheel crews employed at Pisgah, Java and Danby, California, closed stations, had repaired certain cars and had called by telephone and communicated with a telegrapher at Cadiz, California, and transmitted messages that the work had been completed. There were no operators at Pisgah, Java nor Danby.

It is contended by Petitioner that violations of their Agreement occurred in the transmission of these messages.

It is the primary contention of the Carrier that during the progress of the Claims on the property there were four individual claims filed; that in the presentation to this Board by the Petitioner all four of these claims were combined into one single claim and that as a result thereof, there is a variance between the Claims submitted on the property and the one submitted here and the Claim should be dismissed.

The original four claims are not dissimilar in nature. The cases here in dispute involve the identical principle, the same rules and in each the same penalty is asked. In fact, in three of the cases presented the same claimant is involved. There is nothing in the Railway Labor Act which precludes such handling. Carrier's contention in the foregoing respect is without merit and will be given no further consideration.

As to the merits of the case, it is not the position of the Petitioner that all telephone communications are subject to the Telegraphers' Agreement but in the instant case these messages were of a nature that they were wrong-

fully transmitted by telephone by persons not within the purview of that agreement.

In an early award on this property, Award 603, it is noted:

> "It is well known that section foremen and other maintenance employes occasionally use box telephones located at blind sidings and other outlying locations where no operator is available for the purpose of communicating either with operators or their supervisors and this practice is not regarded as an encroachment on the Telegraphers' Agreement.
>
> It is obvious that the installation of these telephones had nothing whatever to do with the discontinuance of the agencies at the stations named, and that an order of the Board requiring a discontinuance of the service would not result in reemployment of telegraphers as, for the limited use involved, it would be far more economical to use commercial 'phones; indeed, if the theory was right that only telegraphers could handle the communications transacted by these signalmen it would be necessary to maintain a 24-hour shift of operators for the purpose in order to obtain the result available under the present practice. . . .'
>
> The Board finds that the use of telephones by signalmen under the circumstances set forth in this case is not violative of the Telegraphers' Agreement."

Also in Award 604 (a sustaining award on this property) involving a station where telegraph service was maintained we observe the following comment:

> "What has been said hereinbefore is not intended to affect the established practice of section and extra gang foremen using telephones occasionally — but not as a regular practice — at outlying points where no operator is available, for the purpose of obtaining instructions and information concerning their work."

Subsequently, Award 645 (on this same property), citing Awards 603 and 604, contains the following statement:

> "This case involves the same question that was dealt with in Awards Nos. 603 and 604 of this Division. As indicated in the Opinion in Award No. 603, the principles relied upon by the Organization are in no wise questioned. It is merely a question of whether they are applicable to the practice here involved consisting in the timekeeper or foreman of extra gangs using telephone in booth at closed station to call an operator to request him to send a message concerning the work of such extra gangs. As is well known these extra gangs are not located at a particular location but move along where their work requires. It is occasionally necessary for them to contact with their superiors regarding their work. It was this type of communication that was involved."

Since telegraphers cannot be present at every blind siding or closed station where wheel truck crews must work, it would appear to be a matter of

sound managerial procedure to have the wheel truck crews telephone their progress reports to the nearest telegrapher. The information, involved herein, conveyed by telephone was clearly incidental to the work of the crew and not a message exclusively reserved to telegraphers. See Award 13729 (on this property).

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 19th day of January 1967.

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