



Award No. 15163
Docket No. TE-14004

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Erie-Lackawanna Railroad (Erie District), that:

1. Carrier violated the parties' Agreement because it required or permitted employes not covered thereunder to perform work covered by the scope thereof, at Elmira, New York, beginning May 1, 1961.

2. As a result of said violations the following Operators shall be compensated for a day's pay (8 hours) in addition to their regular pay, for each day that they have worked or will work their regular assignments at RA Office, Elmira, New York, beginning with the 1st day of May, 1961, and continuing so long as violation exists.

J. F. O'Hara	— 7 AM to 3 PM shift—	Sat and Sun rest days
E. S. Keener	— 3 PM to 11 PM shift —	Mon and Tues rest days
W. J. Rohan	— 11 PM to 7 AM shift—	Wed and Thur rest days
C. N. Farnbaugh	— regular relief	— Thur and Fri rest days

EMPLOYEES' STATEMENT OF FACTS: As evidenced in Paragraph No. 1 of the Statement of Claim, the employes charge violation of the parties' Agreement by Carrier, when it requires or permits its employes who are not covered by the scope thereof to perform work thereunder, at Elmira, New York.

Formal claim was filed by the District Chairman, wherein he set forth the basis for the charge of Agreement violation, included evidence to support his charge, and requested payment for the therein named claimants for each day the violation is in evidence.

In the claim letter, and in correspondence exchanged subsequent thereto in which decisions were rendered or rejected, and in appeals instituted, the parties have fully and comprehensively set forth the facts of the case, their respective positions and arguments relative thereto.

Erie No. 6 and DL&W No. 8. Erie No. 6 operating over former Erie route from Chicago and DL&W No. 8 operating over former route DL&W from Buffalo combined at Elmira as No. 6 and operated over former DL&W route to Hoboken. At Binghamton, part of train, identified as No. 26, operated to Hoboken over former Erie route. Mail and express train operated as a separate section of No. 6 out of Elmira over former DL&W route to Hoboken.

Erie No. 2 and DL&W No. 6. Erie No. 2 operating over former Erie route from Chicago and DL&W No. 6 operating over former DL&W route from Buffalo combined at Elmira as No. 2 and operated over former DL&W route to Hoboken. At Binghamton, part of train, identified as No. 22, operated over former Erie route to Hoboken.

Because of the change in operation and combining of trains at Elmira, New York, Trainmaster Godfrey, headquartered at Hornell, New York, division headquarters, was sent to Elmira to assist Trainmaster Sipple, headquartered at that point, in supervising and directing the new operation. At the outset, the change in operation at Elmira did not function as had been anticipated, and it was some time thereafter before the changed operation did begin to function without causing considerable delay to trains. It was around the middle of June when Trainmaster Godfrey was returned to his own headquarters at Hornell and as near as Carrier was able to determine, this is the approximate time when operations at Elmira began to function in a more satisfactory manner.

Under date of July 26, 1961, Carrier's Exhibit A, claim was instituted by the General Chairman as contained in Petitioner's "Statement of Claim" with Chief Dispatcher G. H. Packer. Claim was denied by the Chief Dispatcher under date of July 28, 1961, and thereafter handled on appeal up to and including Carrier's highest officer designated to handle such matters, where it was discussed in conference June 12, 1962, and denied. Carrier's denial decision during conference was confirmed by letter dated June 21, 1962, attached hereto as Carrier's Exhibit B.

All claimants were on duty and under pay during entire period of claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner has set forth messages transmitted by telephone by persons other than Telegraphers, the substance of which is not denied by Carrier. Petitioner contends that the substance of said messages is by nature, *ipso facto*, reserved to Telegraphers. Carrier alleges that such messages have historically and customarily been transmitted via telephone, on its property, by employees other than Telegraphers.

The Scope Rule of the Agreement is general in nature. When this is so we held in Award No. 13335:

"The Scope rule of the Agreement is general in nature. To prevail, Telegraphers have the burden of proving, by a preponderance of the evidence, that messages of this kind have been transmitted, exclusively, on the property, by employees covered by the Agreement. Instead, it argues, in effect, that industry wide the transmission of such information has been historically the work of telegraphers.

The work reserved to Telegraphers is not uniform on different systems even though the Scope Rule of the Telegraphers' Agreements is substantially and sometimes identically the same. What is reserved to Telegraphers under a Scope Rule, general in nature, is a matter of proof, not of predilection."

In the instant case Petitioner has failed to satisfy the burden of proof prescribed in Award No. 13335. We, therefore, are compelled to dismiss the Claim for failure of proof.

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 Claim must be dismissed for failure of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1967.