

Award No. 15169
Docket No. TE-13247

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk & Western Railway (Virginian Lines) that:

1. The Carrier violated the terms of an Agreement by and between the parties hereto when at the station locations hereinafter set forth in Column A and on the dates set forth in Column B it permitted or required employes not covered by said Agreement to perform telephone communication work in connection with the blocking and/or reporting (OS'ing) of trains; copy train lineups and/or other telephone messages of record, all of which is a class of work reserved exclusively to Telegraphers (Telephoners):

	Column A	Column B
Claim No. 1	Crewe and Victoria, Va.	July 28, 1960
Claim No. 2	Huddleston, Virginia	Aug. 12, 1960
Claim No. 3	Victoria, Virginia	Aug. 18, 1960
Claim No. 4	Cullen, Virginia	Aug. 25, 1960
Claim No. 5	Long Island, Virginia	Sept. 2, 1960
Claim No. 6	Roanoke, Virginia	Sept. 5, 1960
Claim No. 7	Cullen, Virginia	Sept. 8, 1960
Claim No. 8	Huddleston, Virginia	Sept. 9, 1960
Claim No. 9	Brookneal, Virginia	Sept. 12, 1960
Claim No. 10	Brookneal, Virginia	Sept. 15, 1960
Claim No. 11	Brookneal, Virginia	Sept. 19, 1960
Claim No. 12	Cullen, Virginia	Sept. 20, 1960
Claim No. 13	Phenix, Virginia	Sept. 22, 1960
Claim No. 14	Cullen, Virginia	Sept. 23, 1960
Claim No. 15	Huddleston, Virginia	Sept. 23, 1960

	Column A	Column B
Claim No. 16	Brookneal, Virginia	Sept. 29, 1960
Claim No. 17	Cullen, Virginia	Oct. 6, 1960
Claim No. 18	Brookneal, Virginia	Oct. 10, 1960
Claim No. 19	Brookneal, Virginia	Oct. 14, 1960
Claim No. 20	Roanoke, Virginia	Oct. 15, 1960
Claim No. 21	Victoria, Virginia	Oct. 19, 1960
Claim No. 22	Roanoke, Virginia	Oct. 19, 1960
Claim No. 23	Roanoke, Virginia	Oct. 20, 1960
Claim No. 24	Roanoke, Virginia	Oct. 25, 1960
Claim No. 25	Roanoke, Virginia	Oct. 27, 1960
Claim No. 26	Roanoke, Virginia	Oct. 28, 1960
Claim No. 27	Brookneal, Virginia	Nov. 3, 1960
Claim No. 28	Roanoke, Virginia	Nov. 10, 1960

2. The Carrier shall, because of said violations, compensate employees who were deprived of their right to perform the work in question at the locations and on the dates set forth in Item 1 of this Statement of Claim in accordance with the following:

Claim No. 1—Senior, idle, extra telegrapher a day's pay at the "Block Operator's" rate or in the absence of such the senior, regularly assigned telegrapher idle on his rest day for one day's pay at the penalty rate of his position.

Claim No. 2—Agent-Telegrapher H. B. Davis, a "call" as provided by Article 5.

Claim No. 3—Senior, idle, extra telegrapher a day's pay at the "Block Operator's" rate, or in the absence of such the senior, regularly assigned telegrapher idle on his rest day for one day's pay at the penalty rate of his position.

Claim No. 4—Agent-Telegrapher L. H. Hady, a "call" as provided by Article 5.

Claim No. 5—Agent-Telegrapher W. M. Wood, a "call" as provided by Article 5.

Claim No. 6—Senior, idle, extra telegrapher a day's pay at the Roanoke Terminal pro rata rate, or in the absence of such the senior, regularly assigned telegrapher idle on his rest day for a day's pay at the penalty rate of his position.

Claim No. 7—Agent-Telegrapher L. H. Hardy, a "call" as provided by Article 5.

Claim No. 8—Agent-Telegrapher H. B. Davis, a "call" as provided by Article 5.

- Claim No. 9 — Agent-Telegrapher H. E. Bell, a "call" as provided by Article 5.
- Claim No. 10 — Agent-Telegrapher H. E. Bell, a "call" as provided by Article 5.
- Claim No. 11 — Agent-Telegrapher H. E. Bell, a "call" as provided by Article 5.
- Claim No. 12 — Agent-Telegrapher L. H. Hardy, a "call" as provided by Article 5.
- Claim No. 13 — Agent-Telegrapher J. W. Poindexter, a "Call" as provided by Article 5.
- Claim No. 14 — Agent-Telegrapher L. H. Haddy, a "call" as provided by Article 5.
- Claim No. 15 — Agent-Telegrapher H. B. Davis, a "call" as provided by Article 5.
- Claim No. 16 — Agent-Telegrapher H. E. Bell, a "call" as provided by Article 5.
- Claim No. 17 — Agent-Telegrapher L. H. Hardy, a "call" as provided by Article 5.
- Claim No. 18 — Agent-Telegrapher H. E. Bell, a "call" as provided by Article 5.
- Claim No. 19 — Agent-Telegrapher H. E. Bell, a "call" as provided by Article 5.
- Claim No. 20 — Senior, idle, extra telegrapher a day's pay at the Roanoke Terminal pro rata rate, or in the absence of such the senior, regularly assigned telegrapher idle on his rest day for a day's pay at the penalty rate of his position.
- Claim No. 21 — Senior, idle, extra telegrapher a day's pay at the "Block Operator's" rate, or in the absence of such the senior, regularly assigned telegrapher idle on his rest day for one day's pay at the penalty rate of his position.
- Claim No. 22 — Senior, idle, extra telegrapher a day's pay at the Roanoke Terminal pro rata rate, or in the absence of such the senior, regularly assigned telegrapher idle on his rest day for a day's pay at the penalty rate of his position.
- Claim No. 23 — Senior, idle, extra telegrapher a day's pay at the Roanoke Terminal pro rata rate, or in the absence of such the senior, regularly assigned telegrapher idle on his rest day for a day's pay at the penalty rate of his position.
- Claim No. 24 — Senior, idle, extra telegrapher a day's pay at the Roanoke Terminal pro rata rate, or in the absence of such the

senior, regularly assigned telegrapher idle on his rest day for a day's pay at the penalty rate of his position.

Claim No. 25 — Senior, idle, extra telegrapher a day's pay at the Roanoke Terminal pro rata rate, or in the absence of such the senior, regularly assigned telegrapher idle on his rest day for a day's pay at the penalty rate of his position.

Claim No. 26 — Senior, idle, extra telegrapher a day's pay at the Roanoke Terminal pro rata rate, or in the absence of such the senior, regularly assigned telegrapher idle on his rest day for a day's pay at the penalty rate of his position.

Claim No. 27 — Agent-Telegrapher H. E. Bell, a "call" as provided by Article 5.

Claim No. 28 — Senior, idle, extra telegrapher a day's pay at the Roanoke Terminal pro rata rate, or in the absence of such the senior, regularly assigned telegrapher idle on his rest day for a day's pay at the penalty rate of his position.

A joint check of Carrier's records shall be made to determine to whom compensation is due in Claims Nos. 1, 3, 6, 20, 21, 22, 23, 24, 25, 26 and 28.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto effective September 1, 1945, and as otherwise amended. The Norfolk & Western Railway merged with the Virginian Railway, effective December 1, 1959, subsequent to which the Norfolk & Western Railway controls the operation of the merged railroads, but the Agreement hereinbefore referred to governs that part of the merged railroads which was formerly the Virginian Railway.

The 28 claims included in this submission were handled on the property separately. We have, however, included all of the claims in this submission for two reasons: (1) All of the claims deal with the violation of the scope coverage of the parties' Agreement as it pertains to the class of work covered by said Agreement; and (2) Because the question at issue operates uniformly upon the class of employees covered by the parties' Agreement.

The Employees have, in order to confine the facts and pleadings to a minimum, and eliminate repetitious handling to the extent possible, delineated the handling of Claims Nos. 1, 2, 4, 5, 6, 9 and 13, as representative of the property handling of all of the claims involved in this submission. However, in the event your Honorable Board desires to examine each of the 21 other claims here presented, such claim files can be made available to your Board.

CLAIM NO. 1

Briefly, the facts in Claim No. 1 are: At 4:05 A. M. on July 28, 1960, the Train Dispatcher at Victoria called the Train Dispatcher at Crewe on the telephone and requested a clearance of the block on No. 71, as follows: "Has No. 71 cleared the block at Virso?" The Dispatcher at Crewe cleared the block to the Train Dispatcher at Victoria by stating: "Yes, block was cleared at 2:35 A. M."

senior, regularly assigned telegrapher idle on his rest day for a day's pay at the penalty rate of his position.

Claim No. 27 — Agent-Telegrapher H. E. Bell, a 'call' as provided by Article 5.

Claim No. 28 — Senior, idle, extra telegrapher a day's pay at the Roanoke Terminal pro rata rate, or in the absence of such the senior, regularly assigned telegrapher idle on his rest day for a day's pay at the penalty rate of his position.

A joint check of Carrier's records shall be made to determine to whom compensation is due in Claims Nos. 1, 3, 6, 20, 21, 22, 23, 24, 25, 26 and 28."

The Carrier declined the claims.

OPINION OF BOARD: We have carefully examined the record before us and the submissions of the parties. Involved are twenty-eight alleged violations of the agreement involving the use of the telephone by Carrier employees.

The Carrier makes a categorical denial of the charge, and states Claimants were not deprived of any contractual right by its action. It also notes that the Organization, in its rebuttal, has not offered any denial of its basic contention that past practice on this property supports the Carrier's position.

It is evident from the record that the Organization has failed to meet its burden of proving that the telephone usage here subjected to claim is reserved to telegraphers to the exclusion of all others on this property.

A denial Award is required.

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

Claims denied.

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.

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