

Award No. 15711
Docket No. TE-14078

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 Agreement when it caused, required or permitted an employe (clerk) not covered by the Telegraphers' Agreement to make patches on the Test Panel located in Corning Passenger Station, New York, between 3:00 A. M. and 4:00 A. M. on January 28, 1962.

2. Carrier shall compensate an idle telegrapher (senior and extra in preference) for one day's pay (8 hours) at the rate of \$2.47 per hour because of the violative act set forth in paragraph 1. We request that Carrier furnish the name of the idle telegrapher above and insert the name in claim.

EMPLOYEES' STATEMENT OF FACTS: As indicated in paragraph 1 of the Statement of Claim, a clerk (Lawrence Clark), occupant of a third shift position at Corning Passenger Station, New York, was instructed by Mr. John Titus, Supervisor of Communications, to place a patch on the circuit between Corning and HO Tower, Horseheads, New York, a distance of fifteen miles.

The clerk made the patch as instructed by the supervisor. The incident occurred between 3:00 and 4:00 A. M. on January 28, 1962.

The herein claim resulted from that action, in which the Employees charge Carrier with violating the Agreement rules by requiring or permitting an employe not under the Agreement scope to perform work thereunder covered, and compensatory request was made that eight hours' pay be allowed to an idle telegrapher, senior and extra in preference.

The claim letter and subsequent letters exchanged between the parties are attached hereto, showing the bodies of each letter, which are identified as ORT Exhibits 1 through 12.

Claim was denied by the Chief Dispatcher under date of February 10, 1962, 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 denial decision during conference was confirmed by letter dated June 21, 1962, attached hereto as Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier moves that the Claim be dismissed for failure to name the Claimant in compliance with Article V, 1 (a) of the August 21, 1954 National Agreement. We find that the identity of the employe can be readily ascertained, and this satisfies Article V 1 (a). See Award No. 15056. Motion denied.

The Claim was initiated because a Clerk on duty, by direction of the Supervisor of Communications, made a patch on a Test Panel at Corning, New York, sometime between 3:00 A. M. and 4:00 A. M. on January 28, 1962. Organization avers that the work of making such a patch is reserved to telegraphers.

The cornerstone Award apposite to the issue is Award No. 3524, in which it was held:

" . . . The Carrier contends that testing, patching and balancing do not belong exclusively to the telegraphers. In this respect, we are of the opinion that testing, patching and balancing is work belonging exclusively to the telegraphers when it is incidental to and done in connection with the operation of lines, either telegraph or telephone, in performing work belonging to the telegraphers under their Agreement. On the other hand, such work is not that of the telegrapher when done by Telegraph and Signal Maintainers incidental to and in connection with the maintenance of lines. . . ."

Accord, Award Nos. 4880, 8018, 10624, 10967, 13044, 13098 and Award No. 10, Special Board of Adjustment No. 266. Applying the holdings in the cited Awards we find that the work of patching carrier-controlled communication lines belongs exclusively to telegraphers except when such work is done by maintenance employes as an incident of maintenance or repair. The work of the Clerk does not come within the exception. We, therefore, will sustain paragraph 1 of the Claim.

Paragraph 2 of the Claim prays for compensation "for one day's pay (8 hours)." Inasmuch as the occurrence took place between the hours of 3:00 A. M. and 4:00 A. M., and there is no showing that the Clerk was held on overtime for the work in question and had a telegrapher been assigned the work, it would have been outside and not continuous with his established hours, we find Claimant is entitled to be compensated for a "call", as provided for in Rule 9 (a) of the Agreement. We sustain paragraph 2 of the Claim only to that extent.

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 Carrier violated the Agreement.

AWARD

Paragraph 1 of Claim sustained.

Paragraph 2 of Claim sustained to extent set forth in Opinion, supra.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.