Award No. 15779
Docket No. TE-14575

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Duluth, Missabe and Iron Range Railway, that:

1. Carrier violated the Agreement between the parties when on September 22 and October 6, 1962, it required or permitted the clerk at Aurora, Minnesota, an employe not covered by the Agreement, to transmit messages from that station.

2. Because of these violations, Carrier shall compensate R. J. Peil, Agent-Telegrapher at Aurora, Minnesota, in the amount of a call allowance of two (2) hours' pay at the time and one-half rate for each day September 22 and October 6, 1962.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective January 1, 1953, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

There is one position covered by the Agreement at Aurora, Minnesota. The position is classified Agent-Telegrapher with an assignment to work Monday through Friday, rest days Saturday and Sunday. The position is not filled Saturday and Sunday. Included in the duties of the Agent-Telegrapher position at Aurora is the work of handling orders, reports, messages, and other communications of record.

Carrier also employs a Clerk (not covered by the Agreement) at Aurora. At 3:29 P.M. on Saturday, September 22, 1962 (a rest day of the Agent-Telegrapher), the Clerk at Aurora transmitted by telephone to the Chief Dispatcher at Duluth, Minnesota, over the Agent's signature, the following:

"Pick up SOO 64779 pulp at Skibo for north, bill on desk at Aurora."

Again on Saturday, October 6, 1962, the Clerk at Aurora, over the Agent's signature, transmitted the following message to the Yardmaster at Two Harbors, Minnesota:

The claims were denied by Mr. E. W. Anderson in his letter to Mr. M. O. Olson dated November 23, 1962. Copy is attached and marked as Carrier's Exhibit D.

The final appeal of the claims were made by Mr. M. O. Olson in his letter to Mr. H. W. Kosak, Director of Personnel, dated November 28, 1962. Copy attached and marked as Carrier's Exhibit E.

Mr. Kosak denied the claim in his letter to Mr. Olson dated December 10, 1962. Copy is attached and marked as Carrier's Exhibit F.

(Exhibits not reproduced.)

OPINION OF BOARD: There is one position classified as Agent-Telegrapher at Aurora, Minnesota with an assignment to work Monday through Friday, rest days Saturday and Sunday. This position is not filled on either of the rest days. The Carrier also employs a Clerk at this station not covered by the Agreement between the parties. On two separate Saturdays, the rest days of the Agent-Telegrapher, the Clerk telephoned the Dispatcher to tell him that a carload of pulp at a designated point was ready to be picked up.

The Organization contends that these messages were communications of record affecting the movement of trains; that the work of handling such communications is work reserved to Telegraphers under the terms of the Agreement by virtue of the Scope Rule, and has been historically, traditionally and customarily performed by Telegraphers.

The Carrier, on the other hand, submits for our consideration the contentions that the work of handling these types of messages is not the kind of work usually and customarily performed by the class of employes included in the Scope Rule, that the employes have not performed the work to the exclusion of other employes; further, that historically, traditionally and customarily, the work of handling such messages has been regularly performed by employes other than Telegraphers, that the messages were not communications of record and did not affect the operation of trains or affect the safety of persons and property.

The central issue to be determined in this case is whether or not the messages involved did in fact constitute communications of record. The test to be applied is whether they were directly related to the control of transportation. From a review of the messages themselves, a review of the record and the arguments propounded by both sides, we are convinced that the messages were informational messages to the effect that a car was ready for movement. They were simply notices which by themselves could not have affected the control of transportation. There is a dispute between the parties as to whether these messages were communications of record, but the burden of proof is always on the Claimant in asserting such an essential fact to prove it by a preponderance of evidence. Such evidence is lacking in the record. We will deny the claim.

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 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 28th day of July 1967.

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