

Award No. 15859
Docket No. TE-12740

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

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

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad of Texas, that:

1. The Carrier violated the Agreement between the parties when at 2:45 P. M., May 16, 1960, it permitted or required an employe other than covered by the Telegraphers' Agreement to transmit a message by telephone from Granger, Texas to Denison, Texas.

2. Because of said violation Carrier shall be required to compensate M. C. Holderfield, Agent-Telegrapher, Granger, Texas, a day's pay as provided for in Rule 1(d) of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Granger, Texas, is situated on Carrier's South Texas Division, approximately 268 miles south of Denison, Texas. Claimant, Mr. M. C. Holderfield, was the regularly assigned Agent-Telegrapher at Granger 8:00 P. M. to 5:00 A. M., Monday through Friday of each week, with rest days of Saturday and Sunday. Holderfield was off duty at 2:45 P. M., when at that time a car repairman utilized the Dispatcher's telephone at Granger and gave the Dispatcher a message report to the effect that car MKT 41532 had been repaired and was ready to move; that new wheels had been put under it; and also asked if there were any more bad order cars on the line to be repaired.

The Agreement between the parties, which by this reference is hereby placed in evidence, provides:

"RULE 1. EMPLOYEES INCLUDED

(a) These rules and working conditions will apply to Agents, Freight Agents, or Ticket Agents, Agent Telegraphers, Agent-Telephoners, Relief Agents, Assistant Agents, where they have charge of station, take the place of or perform the work of an Agent, Telegrapher, Telephone Operators (except Switchboard Operators), Tower-

employees represented by various organizations have used the telephone to communicate about matters incidental to their occupations.

That such use of the telephone is not the exclusive work of the Telegraphers and never has been is a matter of record, as shown by the following excerpts from various awards interpreting the Telegraphers' Agreement on this property:

Award No. 1657 (Mitchell), held:

'It is conceded by the Employes that the Carrier has a right to use the telephone for ordinary conversational purposes but they question the right of the Carrier to require or permit employes not under the Telegraphers' Agreement to use the telephone for sending or receiving messages, reports of record, or the handling of train orders, all in connection with the Carrier's business. In Award 603 this Board said:

"With no disposition to trench on the long line of decisions sustaining these principles the Board deems them inapplicable in the instant case. It is not always easy to distinguish situations arising under the Telegraphers' Agreement involving the use of telephone for the reason that it is well known that the telephone is and has been used for many purposes independently of its use by the telegraphers. It is, of course, not even claimed that all telephone communication is subject to the Telegraphers' Agreement."

Award No. 4737 (Stone), held:

'OPINION OF BOARD: On March 26, 1948, an employe not under the Telegraphers' Agreement in the Glen Park Yard office, Kansas City, Kansas, transmitted by telephone to an employe not under the Agreement in the Division Freight and Passenger Office at Tulsa a record of tank cars then en route, for the purpose of answering an inquiry of patrons of the railroad as to the location of those cars, which were intended for them. Both these offices were non-telegraph, with no employes under the Telegraphers' Agreement. Did this constitute a violation of the Scope Rule which forbids such handling of "messages, by telegraph, telephone or mechanical telegraph machines?"

As has been frequently noted, the Scope Rule of the Telegraphers' Agreement does not purport to specify the work that is encompassed within it. Except where limited or extended by negotiation, it includes the traditional and customary work of that craft and it has to do with communication service involved in the operations of the Carrier, comprehended by the words "messages, orders or reports of record." When the telephone came into use, it not only took over the work formerly performed by telegraphers, but added new facility and convenience of communication resulting in service which had not theretofore been performed by telegraphers. The communication involved in this claim concededly had no

"(d) Station or other employes at closed offices or non-telegraph offices shall not be required to handle train orders, block or report trains, receive or forward messages, by telegraph, telephone or mechanical telegraph machines, but if they are used in emergency to perform any of the above service, the pay for the Agent or Telegrapher at that office for the day on which such service is rendered shall be the minimum rate per day for Telegraphers as set forth in this agreement plus regular rate. Such employe will be permitted to secure train sights for purpose of marking bulletin boards only.

NOTE: (It is understood that 'closed offices' also mean an office where other employes may be working not covered by this agreement, or an office which is kept open a part of the day or night.)

(e) No employe other than covered by this Agreement and Train Dispatchers will be permitted to handle train orders at Telegraph or Telephone offices where a Telegrapher is employed and is available or can be promptly located except in an emergency, in which case the telegrapher will be paid for the call (and the dispatcher will notify the Superintendent so proper record and allowance will be made).

RULE 4. SENIORITY

(a) Employes covered by these rules are in line for promotion and where qualifications are sufficient seniority will prevail. Seniority will date from last entrance to the service on each district.

RULE 7.

POSITION CLASSIFICATION

(a) Where payroll classification does not conform to Paragraph (a) of Rule 1, employes performing service in the classes specified therein shall be classified in accordance therewith.

(b) Employes whose duties are other than those enumerated in Rule 1 are not included in the provisions of these rules."

The correspondence of the handling of this claim on the property is attached hereto and made a part hereof, Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute centers on a telephone call wherein a car repairman notified a dispatcher of the completion of repairs to a car and inquired if other repair jobs were available.

We have consistently held that the use of the telephone is not the exclusive prerogative of Telegraphers. Awards 1657, 4737, 5182, 9572, 10700 and many others.

The nature of the message to be transmitted determines whether or not Telegraphers may claim the exclusive right to handle the communication.

Where the message controls or affects the movement of trains or safety of persons or property, Telegraphers have a valid claim. See among recent awards, Awards 10525, 10836, 11147, 13967 and 14416.

But where the message simply relates to the work of the messenger, he may personally transmit the dispatch without the aid of a member of the Telegrapher Organization. See Awards 12615, 12616, 13729 and 14111.

We hold that the conversation in question was within the purview of such decisions.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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