



Award No. 15937
Docket No. TE-14709

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad that:

CLAIM NO. 1

1. Carrier violated the Agreement of May 9, 1961, when and because it failed or refused to pay the extra telegraph service employe (NJ&L District) first out on each day — October 8, 9, 24 and 29, 1962, account communication work of record being performed at Jim Thorpe, Pa., by non scope employes on each of those dates.

2. Carrier shall now be required to pay the extra telegraph service employe (NJ&L District), first out at the time communication work of record involved in this claim was performed, for 8 hours at the applicable Jim Thorpe rate (\$2.7468 per hour) to cover each of the 4 days involved — October 8, 9, 24 and 29, 1962.

3. A joint check of Carrier's records be conducted to ascertain the name of the telegraph service employe of the NJ&L District who stood first out at the time communication work of record was performed by non scope employes at Jim Thorpe on each of the four days set out above.

CLAIM NO. 2

1. Carrier violated the Agreement of May 9, 1961, when and because it failed or refused to pay the extra telegraph service employe (NJ&L District) first out on each day — October 16, 18, 19 and 22, 1962, account communication work of record being performed at Jim Thorpe, Pa., by non scope employes on each of those dates.

2. Carrier shall now be required to pay the extra telegraph service employe (NJ&L District), first out at the time communication work of record involved in this claim was performed, for 8 hours at

the applicable Jim Thorpe rate (\$2.7468 per hour) to cover each of the 4 days involved — October 16, 18, 19 and 22, 1962.

3. A joint check of Carrier's records be conducted to ascertain the name of the telegraph service employe of the NJ&L District who stood first out at the time communication work of record was performed by non scope employes at Jim Thorpe on each of the four days set out above.

EMPLOYEES' STATEMENT OF FACTS: This submission involves two separately handled disputes, but for convenience due to similarity of issues have been combined into this single submission as Claim No. 1 and Claim No. 2.

The correspondence exchanged between the parties in the property handling of Claim No. 1 is reproduced and attached hereto as ORT Exhibits 1 through 12 — Claim No. 1.

The initial claim letter filed in Claim No. 2, and the reply thereto by Carrier, are reproduced and attached hereto as ORT Exhibits 1 and 2 — Claim No. 2. The similarity of issues in both claims is evident in the letters ORT Exhibits 1 and 2 in Claim No. 2, as related to exhibits of the same numbers in Claim No. 1. Correspondence exchanged subsequent to ORT Exhibits 1 and 2 in Claim No. 2 follows the same wording and effect as those letters in ORT Exhibits 3 through 12 of Claim No. 1, hence, reproduction thereof shall, for brevity, be omitted.

A review of the correspondence will fully disclose that the facts of the cases, the details and incidents relative thereto, the basis for the claims, the rules advanced in support of the claims, the respective positions of the parties, arguments by each in support of their position, and the area of disagreement, are amply manifested in the documented record. With the exhibited correspondence being part of this submission, there is therefore no need for reiteration of those points, except to the extent touched upon in the Position of the Employees.

The record herein documented will disclose that this dispute has been handled in accordance with the requirements of law and rules of procedure of your Board but failed of settlement.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Other than the dates involved in this case, the claims in No. 1 and No. 2 are identical, therefore, the following facts apply to each claim.

There is on file with the Third Division, National Railroad Adjustment Board, copy of Agreement dated February 1, 1948 between the Lehigh Valley Railroad Company and The Order of Railroad Telegraphers, such agreement is controlling and is made a part of the record in this case.

On the dates of this claim, there was no telegrapher agreement position at Jim Thorpe, Pa., and there was no employe coming under the scope of the Telegraphers' Agreement employed at that point. There was not an agency station or control tower at that point.

On each of the claim dates, a section foreman or other employe, not a telegrapher, copied a train order received from a telegrapher agreement employe at a wayside telephone at a point other than the station where the Jim Thorpe, Pa., agent-telephoner was located during the years that the agent-telephoner position was in existence.

Section foremen and other employes copied train orders on these same wayside telephones at the same wayside points involved in each of these claims during the time the agent-telephoner was employed at Jim Thorpe, Pa., station, both during and after the hours the agent-telephoner was on duty.

The schedule of rules agreement between the parties, referred to above, was supplemented with an agreement dated May 9, 1961, copy of which is attached as Carrier's Exhibit A and is also made a part of this submission.

As there is no merit to this claim, it was denied when presented on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Heretofore, there have been numerous awards wherein this Board has held that on this property where non-scope employes use telephones for train orders or track car permits that the Organization must in order to establish its claim, show that same were from an office where an operator was employed. Awards 8146 (Elkouri), 8540 (Coburn), 9999 (Webster), 10060 (Daly), 10061 (Kramer), 10911 (Boyd), 10915 (Boyd), 10916 (Boyd), 11064 (Moore), 11402 (Hall), 11593 (Stark) and 12129 (Sempliner). However, there is a substantial distinction from the circumstances in the immediate docket and the situations with which the Board concerned itself in the cited awards.

On 9 May, 1961, the parties entered into an agreement allowing the Carrier to dualize telegrapher work at various named stations and in addition, they provided that "... communication work of record involving the movement of trains and track cars at the points of the agencies that are dualized or consolidated" are to be done by a telegrapher and Article 8 thereof further provided as follows:

" * * * If a situation arises where such work is not so handled and there is a regularly assigned telegrapher employed at the point, such employe will be paid as provided in Rule 13 of the schedule agreement. In the event there is no regularly assigned telegrapher at the point the telegrapher standing first out on the extra list at the time will be paid as provided in Rule 10 of the schedule agreement and he will then be dropped to the bottom of the extra list."
(Emphasis ours.)

It is unrefuted that communications concerning track cars were handled by non-scope employes at Jim Thorpe, a station which had been dualized with another and where, as a result thereof, no telegrapher was on duty. Carrier defends its denial of this claim on the grounds that same were not handled "at the (station) point" but instead at a wayside telephone near the Jim Thorpe station site.

The intent of the parties governs the interpretation of an agreement and the terms adopted therein should be given their clear and reasonable import.

Here, the 9 May, 1961, Agreement was the product of bilateral bargaining and the most cursory reading of same discloses that the Organization was therein seeking to protect the work at the points involved. From a perusal of the contract, it is apparent that the parties intended a broader concept of the word "point" than to which Carrier now seeks to restrict it. Carrier's interpretation would allow it to unilaterally alter same by using wayside telephones near the location — a recourse which this Board will not allow. Award 11561 (Dolnick).

The Board must give vitality to the Agreement as written for it cannot and should not rewrite it. Award 11675 (Rinehart) and other awards therein cited. Obviously, it was within the contemplation of the parties that the stations, such as Jim Thorpe in the instant case, could subsequently be dualized and consolidated with the reduction of service and force. The mere fact that Carrier had communication equipment a short distance from the actual station site is not material. The word "point" meant communications emanating from or transmitted to a specified "geographical locality."

In this claim, the "point" the parties had in mind was the Jim Thorpe locality and it did not matter that the telephone was away from where the actual station had been.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1967.