



Award No. 16519
Docket No. TE-15537

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the Chicago, Burlington and Quincy Railroad, that:

1. Carrier violated the Agreement between the parties when it required or permitted employes not covered by said Agreement to copy lineups as follows:

Akron, Colorado on February 10, 11, 12, 13, 14, 17, 18, 19, 20,
21, 24, 25, 26, 27, 28, 1964.

Villisca, Iowa on May 2, 9, 1964.

Stanton, Iowa on May 19, 1964.

2. Carrier shall compensate employes covered by the Agreement in the amount of a minimum call payment on each date such violations occurred as follows:

H. L. Haynes on February 10, 11, 12, 13, 14, 17, 18, 19, 20, 21,
24, 25, 26, 27, 28, 1964.

R. J. Dickey on May 29, 1964.

D. J. Harlan on May 19, 1964.

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

Akron, Colorado is a station where prior to the time cause for this claim arose there were three shifts providing continuous communication service around-the-clock, the shifts changed at 8:00 A. M., 4:00 P. M. and 12:00 Mid-night. Effective February 8, 1964, the 3rd shift was discontinued. The violations upon which the claims at Akron are based occurred between midnight and 8:00 A. M.

Villisca, Iowa is a station where there is one position under the Agreement, Agent-Operator, with a work week starting on Mondays and assigned rest days Saturdays and Sundays, position not usually filled on rest days. May 2 and May 9, 1964 fell on the Saturday rest day of this position.

Stanton, Iowa is a station where an Agent-Operator is assigned. The occupant of this position divides his time between Stanton, Iowa and Elliott, Iowa, which is a situation usually referred to as a "dualization." The assigned hours are from 7:00 A. M. to 4:00 P. M. (one hour meal period). The claim date, May 19, 1964, fell on a work day of this position.

Claims were filed and handled in the usual manner up to and including the highest designated officer of the Carrier and have been declined. In order not to burden the record, Employees attach only the correspondence reflecting the handling of claims at Akron, which is typical of the handling of the other claims. This correspondence is attached hereto as T.C.U. Exhibits 1 through 7. Attached as T.C.U. Exhibit 8 are examples of train lineups issued to track motor car operators for their protection.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The dispute involved here was handled on the property as four (4) separate claims. All claims involve the handling of motor car lineups. The first claim to be appealed to Carrier's highest officer designated to handle such disputes was the claim of Agent-Operator R. J. Dickey, Villisca, Iowa for a call on May 2, 1964, appealed on May 25, when a track supervisor copied a lineup. This occurrence is exactly the same as the one that was involved in the dispute between these same parties in Award 10453, which will be commented on later. Correspondence exchanged between the parties in this first Dickey claim is attached hereto identified as Carrier's Exhibit No. 1(a), 1(b), 1(c), and 1(d).

The other three claims here involved were all appealed to Carrier's final appeals officer on June 16, 1964. Copy of Carrier's final declination in the second "Dickey" claim is attached hereto identified as Carrier's Exhibit No. 2. Copy of Carrier's final declination in the claim of D. J. Harlan is attached hereto identified as Carrier's Exhibit No. 3. Copy of Carrier's final declination in the claim of H. L. Haynes is attached hereto identified as Carrier's Exhibit No. 4.

The only rule cited by Petitioner while handling these four claims on the property was Rule 1(b). It was and is Carrier's contention that the claims are without contractual support, and that Rule 1(b) actually militates against the claim.

The schedule of rules agreement between the parties, effective May 1, 1953, and amendments thereto, are by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The consolidated claim arises out of Petitioner's contention that Carrier has violated Rule 1—Scope of the Agreement when, on the dates specified Track Supervisors or Section Foremen, while at points where employees covered by the Agreement were employed but not on duty,

obtained train line-ups from telegraphers at other stations. It is the position of Petitioner that the Scope Rule reserves the copying and handling of line-ups to employees covered by the Agreement. It is the carrier's position that such use of the telephone is not reserved exclusively to telegraphers and that Track Supervisors and others have traditionally used the telephones in obtaining line-ups.

As the Scope Rule is general in nature, we must look to custom and practice to ascertain whether or not the work in dispute is exclusively reserved to telegraphers, and the burden of proving that such work is exclusively reserved to telegraphers by tradition, custom and practice is upon the Petitioner.

A review of the record reveals no proof by the Petitioner that the obtaining of line-ups in work exclusively reserved to employees covered by the Agreement. In fact the record contains ample evidence, including an admission by a former representative of the Organization, that the obtaining of line-ups is not work that by tradition, custom and practice, is reserved exclusively to telegraphers. The claim will, therefore, be denied.

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 26th day of July 1968.