

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Norfolk & Western Railway (Lake Region), that:

1. Carrier is violating the Telegraphers' Agreement, Monday through Saturday, by allowing and/or requiring employes not covered thereby, to operate the telephone at Georgetown, Ohio for the purpose of handling messages (reports).

2. Carrier shall, because of the violation set out above, compensate the 1st shift telegrapher R. M. Wallace, the 2nd shift telegrapher A. O. Nation, and the 3rd shift telegrapher E. A. Starosciak, at Georgetown, Ohio, or their successors, commencing with the date of this claim, and for each violation in accordance with the provisions of Mediation Agreement of March 1, 1962.

3. Carrier further violates the Agreement by transferring message work which is performed five days per week by the 2nd shift telegrapher-clerk, on the sixth day to be performed by a telegrapher employe at another location.

4. Carrier shall, because of the violation set out in paragraph three hereof, compensate the 2nd shift telegrapher-clerk at Georgetown, Ohio, E. A. Starosciak, or his successor, a call for each occasion that agreement is violated from date of claim, November 22, 1963, until the violation terminates.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Norfolk & Western Railway (Lake Region), hereinafter referred to as Carrier, and its employes represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to Union and/or Employes, effective as to rules, February 1, 1952, and effective as to rates February 1, 1951, and as

EXHIBIT B - January 9, 1964 - Denial of claim - Chief Train Dispatcher to District Chairman.

EXHIBIT C - February 17, 1964 - Appeal - District Chairman to Superintendent.

EXHIBIT D - March 20, 1964 - Denial of appeal - Superintendent to District Chairman.

EXHIBIT E - April 13, 1964 - Appeal - General Chairman to General Superintendent.

EXHIBIT F - May 29, 1964 - Denial of appeal - General Superintendent to General Chairman.

EXHIBIT G - July 27, 1964 - Appeal - General Chairman to Director of Personnel.

EXHIBIT H - September 23, 1964 - Denial of appeal - Director of Personnel to General Chairman.

EXHIBIT I - October 2, 1964 - Rejection of denial - General Chairman to Director of Personnel.

EXHIBIT J - November 6, 1964 - Affirmation of denial - Director of Personnel to General Chairman.

EXHIBIT K - November 11, 1964 - Notice of intent to appeal to Adjustment Board - General Chairman to Director of Personnel.

EXHIBIT L - November 27, 1964 - Amendment of claim - General Chairman to Director of Personnel.

EXHIBIT M - December 17, 1964 - Affirmation of denial - Director of Personnel to General Chairman.

EXHIBIT N - April 28 1965 - Rejection of denial - General Chairman to Director of Personnel.

(Exhibits not reproduced.)

OPINION OF BOARD: There are three Telegrapher-Clerk positions at Georgetown, Ohio, covering the 24 hour period, Monday through Friday with Saturdays and Sundays as unassigned days. The incumbents of these positions are covered by the Parties' Agreement, whereas an Agent and several Clerical employe positions at this same station, are not so covered.

The first allegation advanced by the Petitioning Organization, is that the employes not covered by the Agreement, are using the telephone to send messages relative to coal consignments Mondays through Saturdays each week. The information, including the location of the various cars, is transmitted over the long distance telephone circuits Monday through Friday, but on Saturdays when there is no switchboard operator on duty, the messages are transmitted over the message circuit.

The second allegation advanced by the Petitioning Organization, is that messages which are filed at Georgetown on Saturdays, and which are normally handled by the 2nd shift Telegrapher-Clerk at Georgetown during his work week Monday through Friday, are carried by the Agent at Georgetown and delivered to the Communication employees at Pine Valley for their handling.

With reference to the first allegation, the Organization contends that Carrier has violated Rule 1 (Scope Rule), Rule 2 (a) (Classification Rule), Rule 26 (Train Order Rule), Rule 5 (Call Rule), and the Mediation Agreement, effective March 1, 1962, and for such violations has demanded that Carrier pay a Call for each such infringement.

For the purpose of this Opinion, we will direct our attention at this point specifically to the Scope Rule and the Train Order Rule, both of which are quoted below.

"RULE 1. SCOPE

This agreement will govern the working conditions and rates of pay of telegraphers, agents, telephone operators (except telephone switchboard operators), agent-telegraphers, agent-telephoners, manager-telegrapher, telegrapher-clerks, levermen, towermen, tower and train directors, block operators, staffmen, operators of mechanical telegraph machines, and other combined classifications listed in the accompanying wage scale, all of whom are hereinafter referred to as 'employees.'"

"RULE 26.

HANDLING TRAIN ORDER

It is not the disposition of the Railroad to displace employees covered by this agreement by having trainmen or other employees operate the telephone for the purpose of blocking trains, handling train orders or messages. This does not apply to train crews using the telephone at the ends of passing sidings or spur tracks in communicating with the operator."

It is a well established principle of this Board, so well established in fact that it is axiomatic when confronted with a Scope Rule general in nature, such as the instant one, the Petitioner has the onus of showing by a preponderant body of evidence that the work performed, has been so performed by their craft, historically, traditionally and customarily, to the exclusion of all other employees. Such a preponderant body of evidence is lacking in this case, hence we cannot find a violation of the Scope Rule.

Insofar as Rule 26 is concerned, there is no question that there are certain types of messages which are within the exclusive domain of telegraphers, and these messages have been delineated in many awards emanating from this Board; however, the messages before us are outside the meaning, intent and province of Rule 26. (See Award 13442.) We cannot find a violation of this Rule.

The Mediation Agreement effective March 1, 1962, begins

"In the application of Rule 26 it is agreed when such service is performed on any day by an employee not covered by this agreement (except Train Dispatchers) the following provisions shall apply.

- (A) At a station or location where telegraphers are employed, a call (Rule 5) will be paid to the off-duty telegrapher assigned at that location whose tour of duty is nearest (either beginning or ending) to the time of the occurrence and at one man stations such call shall be paid to the telegrapher assigned thereto."

This Agreement then outlines the compensation to be paid to telegraphers when work, reserved exclusively to them, is performed by other employees outside the purview of the Agreement. Since the work at issue in this case, is work not reserved exclusively to them, we fail to see how this Mediation Agreement has been violated.

With reference to the second allegation, that is, that the Agent transports messages to Pine Valley for transmittal by telegraphers at that station, we cannot agree with the contention of the Organization to the effect that this is a "de facto" violation of the unassigned work day Rule. Absent a conclusive showing that the messages involved were of a type handled exclusively by the telegraphers in question, we can find no applicability of this rule to this issue. There is nothing in the Rule of the Agreement precluding Carrier's right to transport messages, such as we have here, by messenger to any given point for transmission. 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 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 27th day of September 1968.

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