

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Colorado and Southern Railway, that:

CLAIM NO. 1

1. (a) Carrier violated the terms of an Agreement between the parties hereto when on September 11, 1964, it required or permitted Cashier-Clerk Polt, and employe outside the scope of said Agreement at Longmont, Colorado, to perform the work of transmitting a communication of record (message) over the telephone.

(b) Carrier violated the terms of an Agreement between the parties hereto, when on September 16, 1964, it required or permitted Cashier-Clerk Polt, an employe outside the scope of said Agreement at Longmont, Colorado, to receive a communication of record (message) over the telephone.

2. Carrier shall, because of the violations set forth in (a) and (b) above, compensate E. A. Nooker, regular occupant of the second shift telegrapher's position at Longmont, Colorado, a two hour call at the time and one-half rate for each date September 11 and 16, 1964 at the telegraphers rate for Longmont, having been deprived of his right to perform the work.

CLAIM NO. 2

1. Carrier violated the terms of an Agreement between the parties hereto when on September 1, 1964, it required or permitted Cashier-Clerk Polt and Supervisory Agent Dobbins, Longmont, Colorado, to perform the work of transmitting communications of record (messages) by telephone, Messrs. Polt and Dobbins are not covered by the Telegraphers' Agreement.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate E. A. Nooker, regular occupant of the second shift telegrapher's position at Longmont, Colorado, for a two hour call at

time and one-half, Longmont, Colorado rate of pay, having been deprived of his right to perform the work.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Colorado and Southern Railway Company, hereinafter referred to as Carrier, and its employees represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Employees and/or Union, effective October 1, 1948, including changes and agreed-to interpretations to date of reissue, January 1, 1955, rates of pay effective December 3, 1954, and as otherwise amended. Copies of said Agreements are available to your Board, and are, by this reference, made a part hereof.

At page 37 of said Agreement are listed, under Rule 38, Rates of Pay, the positions in existence at Longmont, Colorado on effective date of said Agreement. For ready reference the listing reads:

Location	Classification	Rate per Hour
Longmont	Telegrapher	1.815
	Telegrapher	1.815
	Telegrapher	1.815

An Agreement between these same parties, effective February 1, 1910, under Article XVII, listed the following positions at Longmont, Colorado:

Location	Classification	Rate per Month
Longmont	Agent & Telegrapher	82.50
	Day Telegrapher	65.00
	Night Telegrapher	65.00

Thus, the above position listings for Longmont, Colorado establish that communication positions had been maintained at Longmont, Colorado on an around-the-clock basis for fifty (50) years or more and were in existence on the effective date of the current Agreement.

The position listings also include the position classification. The "T" symbol in the current Agreement is a class designation symbol, Telegrapher class, and, as provided in Rule 1-Scope, is susceptible to be combined with other classifications as shown in the rule.

Position classification designation is based upon the type and class of work performed. Thus, the primary duties of covered employees at Longmont, Colorado as indicated by their classification was the performance of Carrier's communication work at this station location, in addition to such other duties as the Carrier may assign under Agreement rules. (Rule 26-Working Conditions).

In addition to the covered positions at Longmont, the Carrier also maintained other positions thereat not covered by the scope of the parties' Agreement. There is nothing in the record to indicate that such other positions existed at the time the 1910 Agreement was in effect. However, as of the dates involved in the instant claims, there existed at Longmont a Cashier-Clerk and a Supervisory Agent, among other employees, the former under the scope of the Clerks' Agreement and the latter in a quasi-official position.

he (Kolkman) showed up. It so happened that Track Supervisor Kolkman did not stop at Longmont station in this particular instances, consequently, the next time Cashier Polt talked to Agent Carter, Fort Collins, Colorado, on the conversation telephone, Polt asked Carter to inform Kolkman of the Roadmaster's desire concerning the tie plates, after which Polt discarded the memorandum that Agent Dobbins had left him. There was no message and no communication of record. (See Carrier Exhibit H).

In Item 1(b) of Claim No. 2 (Telegraphers' Case TE-1364), the record of circumstances from which such claim arose on September 16, 1964, attests that the named claimant was still assigned to the 4:00 P. M.-12:00 Midnight Telegrapher position at Longmont, Colorado, when, about 10:30 A. M., September 16, 1964, Cashier Polt, at Longmont, in the customary and long-prevailing manner, called the Chief Yard Clerk at the Yard Office, Denver, Colorado, on the conversation telephone and asked for the regular information concerning cars on the local freight out of Denver for Longmont. Chief Yard Clerk Baity gave Polt the information, in no materially different way than has been the practice for many years (at least 50 years). There was no message sent, nothing addressed to anyone, and no signature attached to any communication. It was merely a telephone conversation in the long-established manner about work to be done at Longmont when the local arrived that point. (Carrier Exhibit I). There was no difference on September 16, 1964, in obtaining the usual advance information on cars destined Longmont and beyond on the Great Western Sugar Company railway at that point than has been the practice for many years. If a note is made from such conversation, as it sometimes is, such note is thrown away as soon as the information is passed along to whomsoever desires it (see latter paragraph of Exhibit H — Agent B. G. Dobbins' letter of October 6, 1964). There was no message and no communication of record.

Under date of October 2, 1964, Division Chairman Carlos Chacon, Telegraphers' Organization, Trinidad, Colorado, initiated and mailed in to Superintendent E. C. Ackerman at Denver, Colorado, a claim in behalf of the 4:00 P. M. Telegrapher, Mr. E. A. Nooker, Longmont, Colorado, which now constitutes Claim No. 2 of the instant dispute (Carrier Exhibit J).

Under date of October 26, 1964, the named claimant, Mr. E. A. Nooker, addressed Superintendent E. C. Ackerman at Denver and advised that "I did not file these claims myself, don't know who furnished the information therein to the district chairman or how or when the alleged violations occurred" (Carrier Exhibit K).

(Exhibits not reproduced.)

OPINION OF BOARD: This case is concerned with certain communications transmitted over the telephone by employes not covered by the Telegraphers' Agreement. The Organization avers that the handling of such communications was violative of the collective bargaining Agreement with Carrier.

Claimant, on the dates involved in these claims, was the regular occupant of the 2nd shift Telegraphers' positions at Longmont, Colorado, with assigned hours 4:00 P. M. to Midnight, Tuesday through Saturday, rest days Sunday and Monday. On September 11, 1964, Friday, a work day of the Claimant's assignment, but prior to the starting time thereof, a Cashier-Clerk, an employe not covered by the Agreement, transmitted the following message over the telephone to a yard clerk at Fort Collins, Colorado:

"Longmont, Colorado
September 11, 1964

To D. L. Kolkman
Ft. Collins

Load 1000 or two 7 X 9 tie plates at Ft. Collins and bill to me
at store lead.

/s/ A. Kaparos
Roadmaster"

On September 16, 1964, Wednesday, a work day of Claimant's position,
at or about 10:35 A.M., a Yardmaster at Denver transmitted the following
message over the telephone to the Cashier-Clerk at Longmont:

"Buck Local freight train has,
1 Phosphate Mead (MP 30087)
3 Molasses Jounhstown [sic]
1 Mty CH Longmont, CBQ 87409"

On or about 2:30 P. M. on September 1, 1964, Tuesday, a work day on the
Claimant's position, but prior to the starting time thereof, a track supervisor
on a Rail detector car, handed the cashier a message at Longmont addressed to
a welder and a Section foreman. The message reads as follows:

"HSH East rail 6163 MP 32 Plus 29 poles 90 lb.

TF 6164 west rail MP 39 plus 5 poles just south of crossing MW
39-10 10 degrees"

NOTE: The letters HSH stand for "Horizontal Split Head," and
TF stands for "Transverse Fissure." Both indicate seri-
ous rail defects."

The above message was transmitted over the telephone by the Cashier
and the Supervisory Agent to the Welder and the Section Foreman.

The Organization contends that all three messages are communications
of record, and should have been handled by telegraphers and not by employees
outside the Scope of their Agreement; that for many years telegraphers by
tradition, custom and practice were required to, and did transmit and receive
messages, orders and reports of record by telephone in lieu of the telegraph.
Recognizing further that they are confronted with a broad, general, Scope
Rule, they nevertheless propound the argument that telephone communications,
such as we have in this case, belong to telegraphers if they fall within any one
of the following categories:

- "1. They relate to the control or movement of trains or
safety of passengers or products,
2. They are communications of record as those terms have
been used in the decisions,

3. They have by tradition, custom and practice on the property been performed by telegraphers to the exclusion of other employees."

The Organization steadfastly maintains that the first message relates to the movement of products, hence principle number 1 is applicable. They further state that it is a communication of record because it was written by the Roadmasters' office and again written by the Yard Clerk at Ft. Collins, that it directly related to the shipment of a couple of thousand tie plates to be billed to a specific location, namely the store lead at Longmont. And further they assert that telegraphers had performed this type of work for over 50 years, hence by tradition, custom and practice, this class of telephone communication work is covered by their Agreement.

The Organization asserts that the second message was a consist and thus came within the purview of all three of the guidelines, that it related and conveyed information pertaining to train movements and thus was a matter of record.

Insofar as the third message is concerned, since it relates directly to the safe movement of trains, passengers and products, Petitioner alleges that it comes within the purview of principle number 1 of the guidelines.

The Carrier summarily denies that these messages were "Communications of record" as these terms are understood in railroad parlance. Carrier also denies that the second message was a train consist as alleged by Petitioner. These were merely telephone conversations relating to work and as such cannot be construed to come within the purview of the Agreement.

It goes without saying that not all telephone conversations between employees of the Carrier, or more specifically all telephone messages, come within the scope of the Telegraphers' Agreement. Over a period of years, certain communications have been recognized as belonging exclusively to telegraphers, and these have been "Communications of record" relating to the movement and control of trains. They are records which Carrier is obligated to make and retain. Because an employee makes a record of a telephonic message does not make it 'ipso facto' a matter of record. The messages in this case are not of the type Carrier compiles as official records. We agree with the contention that the messages involved were simply information relative to the general, day by day work of the railroad, that they were not 'communications of record,' and that they had nothing to do directly with the control or movement of trains. Furthermore, the record is lacking in evidence to demonstrate that such messages have been handled by tradition, custom, and practice by telegraphers to the exclusion of all other employees. For the foregoing reasons, 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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October 1968.