



Award No. 16670
Docket No. TE-15817

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Burlington and Quincy Railroad, that:

1. Carrier violated the Telegraphers' Agreement when on June 22, 1964, it required or permitted party at Seneca, Nebraska, who is not working under our Agreement, to copy information to call crew for Train No. 80.
2. Carrier shall compensate Mr. D. Kynion, an employe on his rest day, for eight hours at the punitive rate of \$3.8232 an hour. Total amount of claim equals \$30.59.

EMPLOYES' 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.

This dispute was handled in the usual manner up to and including the highest designated officer of the Carrier and has been declined. Correspondence reflecting this handling on the property is attached as TCU Exhibits 1 through 13.

On June 22, 1964, the dispatcher called the foreman's home in Seneca, Nebraska, and gave the following information to the foreman's wife, a party not covered by the Telegraphers' Agreement:

"Call time for No. 80 is for 12:15 P. M. Engine 435, 438, and 441."

(Dispatcher also gave the foreman's wife the names of the crew members for this train.)

The foreman's wife asked the dispatcher about Train No. 75 and the dispatcher advised:

"12:45 P. M. to 1:00 P. M. at Seneca."

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: On the date in question, a Dispatcher called the foreman's home in Seneca, Nebraska and gave the following information to the foreman's wife:

"Call time for No. 80 is for 12:15 P. M. Engine 435, 438 and 441."

The Dispatcher also gave the foreman's wife the names of the crew members for this train. The foreman's wife asked the Dispatcher about train No. 75 and he replied:

"12:45 P. M. to 1:00 P. M. at Seneca."

Petitioner alleges a violation of the Scope Rule of the Agreement stating that such messages have by tradition, custom and practice been handled by telegraphers to the exclusion of all others. Carrier categorically denies this, and urges upon us the theory that since the Scope Rule is broad and general, the burden of proof that messages, such as we have in the instant case, have been handled by telegraphers traditionally, customarily, etc., to the exclusion of others, is upon the Petitioner. This is a fundamental principle which we cannot deny. Such a burden of proof rests with Petitioner. The record before us does not satisfy that burden. Furthermore, the messages involved are not "communications of record." There was no requirement that such messages be reduced to writing. They are not of the type which telegraphers have handled over the years to the exclusion of other employees. 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 25th day of October 1968.

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