

Award No. 16677
Docket No. TE-15201

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Duluth, Missabe & Iron Range Railway, that:

1. Carrier violated the Agreement between the parties when, at Rainy Junction, Minnesota, on April 30, May 1 and July 9, 1963, it required or permitted employes outside the Agreement to perform work belonging to employes under the Agreement.

2. Carrier shall be required to compensate W. R. Hussey, senior unassigned Telegrapher, one day's pay for the violations April 30 and May 1, 1963; and the senior idle Telegrapher shall be paid one day's pay for the violation July 9, 1963, for the work claimants were entitled to perform at Rainy Junction.

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

First, Employees wish to call attention to an inadvertent error in advance notice dated September 8, 1964, wherein July 9, 1963 was included as a date in the Employees' Statement of Claim. July 9, 1963 should be disregarded, as the claim here covers only April 30 and May 1, 1963.

Prior to December 21, 1962, there was one Telegrapher position regularly assigned at Rainy Junction, Minnesota. The position was classified Telegrapher (Days) with an assignment of work Monday through Friday, rest days Saturday and Sunday. The position was relieved on Saturday and Sunday by a regular relief employee. Included in the duties of the Telegrapher position at Rainy Junction was the work of handling train orders, reports, messages and other communications.

Carrier also employs Clerks and Yardmasters (not covered by the Agreement) at Rainy Junction.

On December 21, 1962, without conference or agreement with the duly accredited representatives of the Employees, the Carrier declared the position of Telegrapher (Days) at Rainy Junction abolished without, in fact, abolishing

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Almost all of the business of the Carrier comes from the iron ore mining industry in the northern part of Minnesota. It therefore consists almost entirely of transporting iron ore from the iron mines and processing plants in that area to the ore docks situated at Duluth, Minnesota, where the ore is loaded into boats for shipment down the lakes to the steel mills. Consequently, the Carrier's operations are geared directly to iron ore mining operations, and any increase or decrease in iron ore mining operations results in a corresponding increase or decrease in the operations of the Carrier.

The Carrier's ore operation has steadily declined from the peak shipment of 59 million tons of ore in 1959 to the present level of 16 million tons in 1963. As a result of the decline in its ore business, it was necessary for the Carrier to change its operations drastically.

A Central Traffic Control system was completed at the north end of Carrier's facility in northern Minnesota. The completion of CTC in 1961 eliminated the use of train orders in this area.

The work in dispute, which the Organization contends is work of handling communications of record, which they consider to be traditional and under the scope of their agreement and belonging to them, has not and is not work which they have enjoyed exclusively and is not work within the scope of their agreement. The General Yardmaster and Yardmasters at Rainy Junction have performed work of this type for many years as part of their normal yardmaster duties of supervising the Rainy Junction yard.

All messages involved in the instant dispute were telephone messages to and from the Superintendent, Chief Dispatcher or Yardmasters, and the General Yardmaster at Rainy Junction Yard. Of the eight so-called "messages of record," five of the messages relate to the assignment of trainmen; two of the messages relate to the disposition of certain cars of ore to be given priority; and one message involves the notifications that a load shovel was enroute on the north end. None of the messages are messages of record as recognized by your Board.

A copy of the exchange of correspondence between the representatives of the parties in connection with the alleged dispute, described in the Employees' ex parte Statement of Claim, is attached hereto and made a part hereof. (Copies attached and marked as Carrier's Exhibit A.)

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute concerns the basic issue as to whether or not the Carrier violated the Agreement between the parties, when, as claimed by the Organization, employees not covered by the Scope Rule of the Agreement, had in violation of the Agreement, been required or permitted to perform certain work which is reserved to employees enumerated in the Agreement.

There is no dispute as to the material facts in this dispute.

The Organization contends that various employes of the Carrier, not covered by the Agreement, handled the messages at the times, places and in the manner as set forth in its Ex Parte Submission, and that under the Agreement, by tradition, custom and practice the work involved belongs exclusively to the employes under the Agreement.

The Carrier does not deny that the messages, in question, were sent but does deny that the work involved belongs exclusively by tradition, custom and practice to the employes under the Agreement, by virtue of the Scope Rule; that such messages has been regularly performed by employes other than Telegraphers; that the messages were not communications of record and did not affect the operation of trains or affect the safety of persons and property.

The involved Scope Rule is a general one which does not define or describe work, but only lists by titles the classes of employes covered by the terms and provisions of the Agreement. This Board has consistently held that the Organization must prove, by competent evidence, that telegraphers handled the type of message, in question, to the exclusion of any and all other classes of employes.

The Organization in support of its position that the work involved has been done by others, which it claims had been customarily and traditionally performed by Claimant, is in the form of copies of the communications to and from various personnel of the Carrier. In addition to the copies of the communications, the Organization submits a statement showing that on other occasions the Carrier settled and/or comprised a claim or claims of a similar nature as the one before us.

This Board has held on numerous occasions that settlements of disputes, on the property, are not precedents in interpreting the Agreement between the parties. In most instances these settlements are compromises, and do not reflect the merits of the case.

We have carefully examined the messages themselves. After such examination and after a review of the entire record and the arguments advanced by both sides, we are not persuaded that the messages in question were messages of record. We are convinced that these messages were only informational and could not by themselves affect the control of transportation. Taking into consideration the nature and purpose of these messages, we hold that they are not messages of record and, therefore, not the exclusive work of the telegraphers. To hold otherwise would limit the functioning of many employes of the Carrier in carrying out their respective duties and responsibilities.

The parties are in disagreement as to whether these messages were communications of record and had been exclusively assigned, by custom or tradition to the telegrapher employes. We find no competent evidence in the record for resolving these opposing contentions of fact.

The burden of proof is on the Organization. The Organization has failed to meet its burden of proving exclusive rights to the performance of this work by tradition, custom and practice, which it is required to do when a claim, such as the one before us, is made under the general type Scope Rule which is contained in the governing Agreement. 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 Employes involved in this dispute are respectively Carrier and Employes 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 25th day of October 1968.