

Award No. 16682
Docket No. TE-15357

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

CLAIM NO. 1

1. Carrier violated the Agreement on September 14, 1963, when it required and permitted Clerk Johns, an employe not covered by the Telegraphers' Agreement, to perform the work of receiving a message by telephone at "WG" Yard Office, Florence, S. C.

2. Carrier shall compensate B. A. Barnes, one day's pay (eight (8) hours) at the minimum Telegrapher's rate for the violation September 14, 1963.

CLAIM NO. 2

1. Carrier violated the Agreement on September 29, 1963, when it required and permitted Section Foreman D. L. Cannon, an employe not covered by the Telegraphers' Agreement, to perform the work of transmitting a message by telephone from Bessemer, Alabama.

2. Carrier shall compensate J. L. Baggett, Supervisory Agent, Bessemer, Alabama, for one call (two hours at the time and one-half rate) for the violation September 29, 1963.

CLAIM NO. 3

1. Carrier violated the Agreement on December 3 and 4, 1963, when it required and permitted Track Watchman Pack, Remini Bridge, Remini, South Carolina, an employe not covered by the Telegraphers' Agreement, to perform the work of transmitting a message by telephone from Remini, S. C., Charleston Division.

2. Carrier shall compensate B. A. Barnes, one day's pay (eight (8) hours) at the minimum Telegrapher's rate for each violation December 3 and 4, 1963.

CLAIM NO. 4

1. Carrier violated the Agreement on December 4, 1963, when it required and permitted Roadway Foreman H. E. Huckaby, an employee not covered by the Telegraphers' Agreement, to perform the work of transmitting a message by telephone from Mauk, Georgia, Western Division.

2. Carrier shall compensate the oldest idle extra Telegrapher, if none available the oldest idle extra Telegrapher observing a rest day, one day's pay (eight (8) hours) at the minimum Telegrapher's rate for the violation December 4, 1963.

CLAIM NO. 5

1. Carrier again violated the Agreement on December 4, 1963, when it required and permitted H. G. Futch, an employee not covered by the Telegraphers' Agreement, to perform the work of transmitting a message by telephone from La Grande, Georgia, Western Division.

2. Carrier shall compensate the oldest idle extra Telegrapher, if none available the oldest idle extra Telegrapher observing a rest day, one day's pay (eight (8) hours) at the minimum Telegrapher's rate for the violation December 4, 1963.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective November 1, 1939, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The claims incorporated into this appeal were handled separately on property. However, since the question at issue, namely the performance of communication work by employees outside the scope of the Telegraphers' Agreement, is the same in each dispute and progressed under the same rules, therefore, in the interest of brevity and to eliminate repetitious handling, the Employees incorporated these claims into this one appeal.

CLAIM NO. 1 (Carrier File 601-912)

Briefly, the facts in Claim No. 1 are:

Florence, South Carolina, is headquarters for the Charleston Division. At "WG" Yard Office, Carrier maintains a yard force consisting of Yardmasters and clerical employees. In an adjacent office Carrier maintains around-the-clock telegraph service.

On September 14, 1963, at or about 1:40 P.M., Car Distributor Ryals, Rocky Mount, North Carolina, transmitted the following message to clerical employe Jones, Florence Yard Office:

"Want no vents & no rfgrs. Want Mullins 12 foot 40 ft box.
Loris 4 40 ft single door tobacco, Pee Dee 1 40 ft. System
double door box for co. mtl.

The Organization, for many years, has been aware of the fact that the telephone is used for general conversational purposes and that its use by all employees is permitted under the agreement. The Organization has acknowledged this fact by serving, over a period of 13 years, numerous proposals which, if adopted, would change the agreement rules.

Paragraph 1(d) of the Organization's proposal dated October 2, 1946, was a demand that employees of the telegraphers' class or craft be given monopolistic rights "to handle train orders or clearance cards, or to report or block trains or to transmit or receive by telephone, telegraph, or other communicating devices, train orders, clearance cards, messages, train lineups, reports of record, or other information in connection with train movement * * *." Thus, in making its proposal in 1946, the Organization conceded that employees of the telegraphers' class or craft did not have the contract right which they here allege they possess. No rule has been negotiated since that time conferring such rights upon employees of the telegraphers' class or craft.

Anyone with any knowledge at all of labor relations matters knows full well that neither the employees nor their representatives make requests for concessions which have already been granted to them. Thus, if employees of the telegraphers' class or craft possessed the monopolistic rights in 1946, which they now allege they have, why did they, through their representatives, demand such rights? The answer is obvious. No such rights have been conferred upon them by agreement or otherwise. They, therefore, sought a concession which they recognized that they did not have. They cannot cite any agreement provision granting them such rights. Certainly, the Scope Rule, upon which they here rely, does not confer such rights upon them.

By making the ridiculous contention that simply because Section Foremen and other employees' use of the telephone constituted the transmitting of messages of record, The Order of Railroad Telegraphers attempts to create the impression that for non-telegraphers to use telephones in talking to telegraphers is something new. This simply isn't so. Throughout all the years that telephones have been in use, Section Foremen and other employees have used them in communicating with Chief Dispatchers, Train Dispatchers and Telegraphers with respect to placement of Reduce Speed orders. Conditional Stop Sign orders, Approach Prepared to Stop Signs, and Conditional Stop Signs came into use effective November 16, 1957, and since that time Section Foremen and roadway forces have used the telephones in requesting their placement. Their use results in an efficient, safe and economical method of operation. Section Foremen and other employees were using telephones to request the placement of Conditional Stop Sign orders for more than six years before the claims here involved were presented. The Order of Railroad Telegraphers has long since conceded the point here involved, not only by the proposal in 1946, but by its action subsequent thereto.

OPINION OF BOARD: Each of the five claims concerns the use of the telephone by employees not covered under this Agreement. It has been well-established, and it is unchallenged by the Organization, that mere use of the telephone does not automatically restrict the work to telegraphers. The Organization contends that transmission of messages involving train movements and communications of record belongs to its members, and this is the basis upon which the claims have been filed. In support, the Organization cites the Scope Rule as well as scores of settlements of claims under it on the property.

Carrier denies that the communications involved here were the kind over which the Organization has exclusive jurisdiction. It notes that the Scope Rule

does not delineate areas of jurisdiction, and also points to a number of Awards involving the parties which sustained its position in analogous cases.

Between 1946 and 1961 a great many claims were paid by Carrier after individuals not covered by the Agreement transmitted telephone messages. These included train crews directly phoning dispatchers, section foremen phoning dispatchers, clerks transmitting communications concerning the diversion of cars, etc. (Carrier, in its letter of October 22, 1963, stated that it allowed certain claims in error when it paid for section foremen sending messages through telegraph operators.)

While Carrier was allowing some claims on the property, however, it was disputing others. Various claims filed between 1956 and 1963 were ultimately decided by this Board in Awards 12383, 12385, 14533, 14534, 14536, 14537. All were denials. They included such issues as section foremen canceling slow orders by phoning messages through the nearest telegraphers, a clerk transmitting a message through a telegrapher about picking up a car, an acting roadmaster phoning a message concerning delays through the nearest operator, etc.

On the whole the claims allowed by Carrier over the years involved bypassing the operator in the transmission of messages. The cited denial Awards relied in part on the fact that transmission of a message was through the nearest operator. Thus the communications by section foremen through the nearest operator are held not to be improper. Similarly, the telephone call by a car distributor, who is covered by the Agreement, to a clerk requesting information — which was subsequently embodied in a telegram sent by an operator — does not violate the Agreement, nor does the bridge tender's telephone message which was unsolicited, unneeded and unused.

In the absence of exclusive jurisdiction by the Organization over all communications, claims must be assessed on a case-by-case basis, with consideration given to the precedents set by this Board in its Awards. The holdings in the cited Awards dictate denial of the claims now before us.

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

Claims 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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