

Award No. 16985
Docket No. TE-16357

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Morris L. Myers, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
KANSAS, OKLAHOMA AND GULF RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Kansas, Oklahoma and Gulf Railroad, that:

CLAIM NO. 1

1. Carrier violated the Agreement between the parties on March 29, 30, 31, April 1, 2, 5, 6, 7, 8, 9, 12, 13, 15 and 16, 1965, when Section Foreman Hunnicutt, Henryetta, Oklahoma, received, copied and repeated line-ups when the Agent-Telegrapher was not on duty but available for such service.

2. Carrier shall compensate W. L. Holly, Agent-Telegrapher, Henryetta, Oklahoma, for a three-hour call for each of the above dates.

CLAIM NO. 2

1. Carrier violated the Agreement between the parties on March 29, 30, 31 and April 6, 1965, when Lineman Shires, Allen, Oklahoma, received, copied, and repeated line-ups when the Agent-Telegrapher was not on duty but available for such service.

2. Carrier shall compensate J. W. Russell, Agent-Telegrapher, Allen, Oklahoma, for a three-hour call for each of the above dates.

3. Carrier shall, because of employees not covered by the Agreement receiving, copying, and repeating line-ups subsequent to April 14, 1965, at Allen, Oklahoma, in violation of the Agreement, compensate J. W. Russell, Agent-Telegrapher at that station and/or his successor, for a three-hour call for each date such violation occurs.

4. Carrier shall permit a joint check of its records to determine the date of each violation and name of proper claimant.

CLAIM NO. 3

1. Carrier violated the Agreement between the parties on April 19, 20, 21 22, 23 and 24, 1965, when employes not covered by the Agreement at Henryetta, Oklahoma, received, copied, and repeated line-ups when the Agent-Telegrapher was not on duty but available for such service.

2. Carrier shall compensate W. L. Holly, Agent-Telegrapher, Henryetta, Oklahoma, for a three-hour call for each of the above dates.

3. Carrier shall compensate said W. L. Holly for a three-hour call for each such violation subsequent to April 27, 1965.

4. Carrier shall permit a joint check of its records.

EMPLOYES' STATEMENT OF FACTS: Copy of the Agreement between the parties, effective October 1, 1947, as amended and supplemented, is available to your Board and by this reference is made a part of this submission.

The stations involved in these claims are located on Carrier's main line between Muskogee, Oklahoma and Denison, Texas as follows:

Miles from Muskogee Yard	
Henryetta	37.6
Allen	93.5
Wapanucka	133.0
Denison	188.1

The claims involved in this dispute were handled on the property in the usual manner and discussed in conference on November 15, 1965. All three present an identical issue; i.e., whether the Claimants have a contractual right to perform the work of copying line-ups.

On the dates specifically named in the Statement of Claim above, the line-ups in dispute originated with Carrier's train dispatchers at Muskogee. Effective with May 1, 1965, however, KO&G (Carrier's) train dispatcher positions were abolished. Thereafter, the line-ups in dispute originated with train dispatchers of The Texas and Pacific Railway Company located at Fort Worth, Texas.

CLAIM NO. 1

Claimant here, as the Agent-Telegrapher at Henryetta, Oklahoma, is the only employe at that station covered by the Agreement. On the claim dates, his assigned duty hours were 8:00 A. M. until 5:00 P. M., with one hour off for lunch, daily except Sundays.

On the dates set out in the claim, a Section Foreman copied and repeated lineups of trains at various times between 7:33 A. M. and 8:00 A. M., while the telegraph office was closed. He copied the line-ups as they were repeated to him by the Agent-Telegrapher at Wapanucka, Oklahoma. The latter had received them on each date from the train dispatcher.

ORT File: 11-K

Claim: W. L. Holly, Henryetta, Oklahoma

Dates: April 19, 20, 21, 22, 23 and 24, 1965

We note in the General Manager's letter addressed to you under date of June 25, 1965, he allowed Claim No. 13 in behalf of Agent-Telegrapher W. L. Holly for April 14, 1965, and Claim No. 5 in behalf of Agent-Telegrapher J. W. Russell for April 14, 1965, because the facts show in those particular claims the PX line-ups were secured by the person requesting line-up directly from the train dispatcher rather than from a telegrapher. If you will refer to Award No. 2934 referred to and relied upon by you, you will find that the facts there clearly show that the line-ups forming the basis for these claims were secured directly from the train dispatcher rather than from a telegrapher. For this reason, Award No. 2934 does not support claims for other dates referred to above when the line-ups were secured from the Agent-Telegrapher at Wapanucka.

We have reviewed these claims in the light of the statements set forth in your letter of July 30, as well as statements contained in other correspondence between you and Superintendent L. H. Miller and General Manager W. C. Foster, but do not find anything contained therein which would justify changing the decision given to you by the General Manager in which all claims were declined except Claim No. 5 in behalf of Telegrapher Russell, and Claim No. 13 in behalf of Agent-Telegrapher Holly, which were allowed by him for the reasons already explained to you.

We have also reviewed the numerous awards cited in your letter to General Manager Foster, but do not find therein any support for your contention that any of the provisions of the Agreement between the Carrier and your Organization were violated when track foremen or others desiring PX line-ups secure them from a telegrapher. We do not agree with your contention that a PX line-up must be secured from a telegrapher in a hand-to-hand operation rather than by telephone.

In view of the foregoing, claims in behalf of Messrs. Holly and Russell account PX line-ups having been secured from the Agent-Telegraphers at Wapanucka on dates referred to above are hereby declined.

Yours truly,

/s/ B. W. Smith"

OPINION OF BOARD: The issue in this case is whether or not it is violative of the Telegraphers' Agreement for an employe of the Carrier who is not covered by the Telegraphers' Agreement to receive a train line-up at a station where a telegrapher is located but not on duty from a telegrapher at a distant location.

At the outset, it is observed that there has been a myriad of cases involving the question of whether the Scope Rule of the applicable Telegraphers' Agreement has been violated when an employe of a Carrier not covered by the Telegraphers' Agreement has received a line-up at a station where a telegrapher is located, either directly from a dispatcher or from a telegrapher

at a distant station. The Awards in these cases are not only multitudinous but are also in hopeless conflict. About the most that can be said is that each Carrier appears to have its own history on this issue and the Awards seem to depend largely, but not entirely, on the respective histories.

As for this Carrier, there has been only Award No. 2934. In that Award, the Board decided that it was violative of the Telegraphers' Agreement when a dispatcher communicated a line-up directly to a non-telegrapher at a station where a telegrapher was located. While it must be conceded that statements can be found in Award No. 2934 that could be construed to mean that a non-telegrapher cannot receive a line-up even when sent by a telegrapher at a distant station, it cannot be denied that the facts in that Award were that a dispatcher communicated the line-up directly and not through a telegrapher. Therefore, the Board finds that the exact issue here in dispute has not been decided by this Board as to this Carrier.

That being so, the Board is here called upon to determine whether it makes a contractual difference as to this Carrier when a line-up is received by a non-telegrapher from a dispatcher and when it is received from a telegrapher at a distant station. The Board notes that this distinction has been made in Awards regarding other Carriers and is persuaded that this distinction has merit. (See Awards Nos. 1552 and 1553 as to the Cleveland, Cincinnati, Chicago and St. Louis Railway Company and Award No. 15744 as to the Missouri Pacific Railroad Company). The distinction is particularly meritorious in the light of the more recent Awards in line-up cases which hold that the Organization must prove that the work in dispute has traditionally and exclusively been done by telegraphers in order that the Organization prevail in its case. (See, for example, Awards Nos. 10367, 15687, 15916, 15936, 16433, 16502, 16519, 16682, and 16685.) The Organization in this case has not met this burden of proof. Therefore, the claims in this case will be denied.

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 20th day of February 1969.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.