

Award No. 17006
Docket No. TE-14757

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas Zumas, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central, Western District, that:

1. The Carrier violated the Agreement between the parties when on October 10, 1962, it declined the following timeslips:

No.	Submitted By	Date	T-177 Copied By Condr.	Location	Time
21	J. W. Turner	8/10/62	Hill	Dunn, Ind.	10:34AM
24	L. R. Moffett	8/13/62	Jackson	Dunn, Ind.	10:07AM
25	L. R. Moffett	8/13/62	Jackson	Dunn, Ind.	1:18PM
10.1	H. H. Biggs	8/14/62	Jackson	Dunn, Ind.	11:47AM
10.2	H. H. Biggs	8/14/62	Jackson	Dunn, Ind.	8:58AM
11.1	R. C. Brooks	8/16/62	Jackson	Tab, Ind.	6:51AM
11.2	R. C. Brooks	8/16/62	Jackson	Tab, Ind.	11:03AM
22	J. W. Turner	8/17/62	Jackson	Tab, Ind.	11:43AM
26	R. L. Moffett	8/20/62	Jackson	Sloan, Ind.	6:41AM
27	R. L. Moffett	8/20/62	Jackson	*Jackson St.	9:01AM
15.1	H. H. Biggs	8/21/62	Jackson	*Jackson St.	6:21AM
15.2	H. H. Biggs	8/21/62	Jackson	*Jackson St.	11:23AM

*Danville, Illinois

which were submitted account the Carrier permitted or required the indicated Conductor, an employe not covered by this Agreement, to copy Form T-177 (Track Car Operator's Line-up) at the place and time shown.

2. The Carrier shall compensate the employees shown above, in the amount of a "call", as indicated by the submitted timeslips.

3. The Carrier violates the Agreement between the parties when it permits or requires an employee, not covered by this Agreement, to copy a "Track Car Operator's Lineup" Form T-177.

4. The Carrier shall compensate the senior available idle employee, extra in preference, on District 7, in the amount of a day's pay at straight-time rate, for each violation commencing August 27, 1962 and continuing thereafter until this violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: On each of the dates in question, a conductor copied a Form T-177 (track car operator's lineup of trains and track cars) at the indicated locations. While the Carrier had for years used a motor car permit Form M, it introduced in more recent times the Form T-177, which virtually created a work extra when issued to a track car. The track car is permitted to operate in either direction, with or against the current of traffic, opposing oncoming traffic between open stations either ahead of or behind traffic between open stations, and all this without any protection from the operators at the open stations. In fact, open stations may be bypassed at will.

When the claims were filed, the Carrier took the position that because the Form T-177 was not given directly by dispatcher to conductors but through an operator at the next open station, there was no violation of the agreement.

In handling the claim on the property, while the Carrier denied that the work of copying and receiving Form T-177 was covered by the agreement, it did not deny that if it was covered by the agreement the proper amount of compensation due was the call to the employee assigned to the location where the T-177 was copied.

The claims were appealed to the highest officer designated by the Carrier and declined by him. The claims are now properly before your Board for final adjudication.

CARRIER'S STATEMENT OF FACTS: There is in evidence an Agreement between the parties, bearing an effective date of November 1, 1950, containing rules and working conditions applicable to Telegraphers' Agreement employees on Seniority Districts 1 to 10, inclusive. This Agreement was reprinted as of January 1, 1955 and by this reference is made a part of this submission.

Seniority District No. 7, described on page 38 of the Agreement, includes Telegraphers' Agreement employees at locations on the Carrier's Danville Subdivision between Gibson, Indiana and Danville, Illinois. Dunn, Tab and Sloan, Indiana and Jackson Street, Danville, Illinois, where the alleged violations occurred, are located on this Seniority District.

As information for the Board, the Danville Subdivision originally was part of the Western District of the New York Central Railroad, but effective January 1, 1961, it was placed under the jurisdiction of this Carrier's Southern District. The telegraphers on this subdivision continue to work under the

The rule itself was covered in the "Rules for the Operation of Track Cars", effective September 1, 1958 as to the obtaining of the information and the actual Form T-177 was inaugurated coincidental with the rules revised effective October 1, 1960.

The facts upon which the instant case is based are that the conductor pilot or track car operator called on the telephone to a telegrapher at an open station, advising he desired to operate the track car over a particular portion of the Danville Subdivision. The telegrapher at the open station contacted the train dispatcher, advising him of the track car operator's request. The dispatcher advised the telegrapher of permission to operate on the track and information concerning expected train movements in the area for a maximum period of three hours. The telegrapher, in turn, relayed this information to the track car operator, who copied same on Form T-177, provided for that specific purpose.

The Organization submitted time claims for the dates shown above on the basis that the act of a track car operator copying Form T-177 from information supplied by a telegrapher constituted a violation of the Scope Rule of their agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: This docket presents a dispute concerning use of the telephone to secure line-ups at places where telegraphers are not employed. Both the factual details and the parties' theories are extremely vague.

Twenty years ago, in Award 4208, these parties were put on notice that disputes concerning use of the telephone present great difficulty in differentiating between telephone work which belongs to telegraphers under the Scope Rule and that which doesn't.

Awards too numerous to require specific citation have held that the burden of establishing grounds for complaint lies with the Petitioner.

Frequent reviews of our awards concerning the subject matter of the present dispute have established beyond question that such disputes are decided on a case by case basis, as determined by the evidence contained in the individual records.

The record before us does not contain evidence sufficient to satisfy the Petitioner's burden of proof. We must, therefore, dismiss the claim for lack of proof. Award 12356.

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 claim must be dismissed for lack of proof.

AWARD

Claim dismissed.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March 1969.