



Award Number 17529

Docket Number TE-16869

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES
UNION**

FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Fort Worth and Denver Railway, that:

1. The Carrier violates the Telegraphers' Agreement at Lockney, Texas, when it requires and/or permits a non-telegraph agent to transmit communications of record.
2. The Carrier shall now compensate non-telegraph agent C. E. Childers at Lockney, Texas, for the difference between the non-telegraph rate of his position and the rate of agent-telegrapher, Petersburg, Texas, for each and every day the Agreement is violated commencing on October 18, 1965, and continuing thereafter until violation is discontinued.
3. The Carrier shall permit joint check of records to ascertain number of days and amount due.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective December 1, 1955, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

These claims were presented and progressed in accordance with the limits provided by the Agreement, up to and including appeal and conference with the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

A common and almost universal requirement of an agent is that he instruct the conductors of freight trains moving cars from, switching or spotting cars arriving at his station, instructions as to where cars are located, their destinations, furnishing the conductors with information as to their contents and any special instructions as to the care of the lading. Carriers provide a form for this purpose, known as a switch list. It is one of the basic documents used in train operation. These lists are compiled in multiple copies, one or more copies being retained for the agent's record and form a permanent record of work to be performed. These lists directly affect train operation. Depending upon the situation at a station, these instructions, issued by the agent, may result in the train remaining at his station for lengths of time ranging from a few minutes to several hours. Switch lists not only affect

CARRIER'S STATEMENT OF FACTS: The telegrapher position at Lockney, Texas, is classified as a non-telegraph agent and has been for several years. The position is subject to a monthly rate of pay as provided for in the schedule agreement which, by this reference, is made a part of the record in this dispute. This agreement which was revised effective December 1, 1955, is on file with this Division of the Adjustment Board.

On October 18, 1965, the claimant through use of the Bell telephone, phoned the following information to the Chief Dispatcher at Wichita Falls and to the crew of No. 176 at Lubbock:

"Lockney, Texas October 18, 1965 6:30 P.M.

"WJH WFalls

"C&E No. 176 Lubbock

Switching to do and cars to move at Lockney Cotton dock south end

CBS 18475 cotton 192

CBQ 33365 cotton 192

ATSF 20612 cotton 192

ATSF 38409 cotton 192

EL 71473 cotton 192

ATSF 276743 cotton 192

ATSF 34014 cotton transfer

NYC 166730 cotton transfer

BM 76240 cotton transfer

ATSF 142509 cotton transfer

Transfer west end

IC 18515 milo L360

CBQ 62548 milo L360

FWD 8037 milo L360

SOOL 1766 milo L360

GMO 21511 milo P325

GN 13496 milo P325

"Jt WJH No. 176

"Childers"

The above was phoned to "WJH WFalls" who is Mr. W. J. Hamilton, Chief Dispatcher at Wichita Falls and to "C&E No. 176 Lubbock" which is a brief way of identifying the conductor and engineer of Train No. 176 at Lubbock. The claimant was on duty at Lockney, Texas, several miles distant from Lubbock and Wichita Falls. This were merely a switch list which the claimant telephoned to Lubbock and which was used for the information of the conductor and engineer to perform switching when Train No. 176 arrived at Lockney. It was merely information relating to the work to be performed at the claimant's station.

The "message" here is no different than the many "messages" cited by the Employees in Third Division Award No. 9961 involving the same parties to this proceedings.

(Exhibits Not Reproduced)

OPINION OF BOARD: The issue herein is stated by the Organization in its ex parte submission to this Board as "This claim turns on the proposition

that a non-telegraph agent is being required to transmit communications of record in violation of the Agreement between the parties".

The Organization's position is that, there being no telegraph instruments in the station at Lockney, Texas, Claimant has been required by Carrier to use the public telephone to transmit switching instructions to Lubbock, Plainview of Storley, Texas; that Rule 26(c) prohibits non-telegraph agents from transmitting or receiving messages, orders and/or reports of records; that Carrier merely substituted the public telephone for the Morse telegraph as the medium of transmission.

Carrier's response to this claim is that Claimant on October 18, 1965, the only specific date mentioned by the Organization in its progression of the claim on the property, transmitted by telephone "information" relating to the work performed at Claimant's station; that Rule 26(c) applies only when a non-telegraph agent is used for train order purposes or message purposes that are of record not pertaining to the business at his station; nowhere in the Agreement is the use of the telephone reserved exclusively to the work of telegraphers.

Carrier, in support of its position, relies principally on this Board's ruling in Award No. 9961, involving the same parties to this dispute wherein similar telephone communications were involved. In said Award No. 9961, although deciding the dispute on the sole basis as to whether or not Carrier improperly reclassified the Agent-Telegrapher position, this Board stated:

" . . . There is considerable evidence that the Claimant was required to use the telephone frequently during the period covered by his claim to send messages regarding the availability of certain cars. However, we are not persuaded that these calls, with isolated exceptions, amount to anything more than informational messages. So far as the record indicates, and unlike the situation in Awards cited by Petitioner, those calls did not relate to train orders or movement or constitute messages, orders or reports of record. . . ."

In view of the aforesaid reasoning in said Award No. 9961 and not finding it palpably erroneous, we are compelled to 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1969.