



Award No. 18069

Docket No. TE-18496

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

**NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Norfolk and Western Railroad (Lake Region), that:

1. Carrier violated the Agreement between the parties when, on March 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18 and 19, 1968, it required and/or permitted an employe not covered thereby to transmit telegraphic report from Bloomington, Illinois.

2. Carrier shall, as a result, compensate D. W. Shuler, one day's pay for March 4, 11 and 18; E. Mize for March 5, 6, 12, 13 and 19; F. R. Karlock for March 7, 8, 14 and 15; and D. Craig for March 10 and 17, 1968.

Carrier Docket: 30-24-698 - BU-13650-18

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties effective January 1, 1959, as amended and supplemented, is on file with your Board, and by this reference is made a part hereof. Originally, the Agreement was entered into between the New York, Chicago and St. Louis Railroad and its employes on the Nickel Plate, Lake Erie and Western, and Clover Leaf Districts represented by The Order of Railroad Telegraphers.

Subsequent thereto, the Carrier merged with the Norfolk and Western Railway, who assumed all obligations as though an original party to the Agreement as a condition thereof, and the Organization merged with the Brotherhood of Railway and Airline Clerks, becoming the T-C Division. The effectiveness of the Agreement has been maintained throughout.

The claim was timely presented, progressed on the property, including conference with highest officer designated by Carrier to receive appeals, and remained declined. The Employes, therefore, appeal to your Honorable Board for adjudication.

CARRIER'S EXHIBIT A - April 1, 1968 - Appeal General Chairman to Superintendent.

CARRIER'S EXHIBIT B - April 4, 1968 - Denial Superintendent to General Chairman.

CARRIER'S EXHIBIT C - April 10, 1968 - Appeal General Chairman to Manager Labor Relations.

CARRIER'S EXHIBIT D - April 25, 1968 - Acknowledgment of appeal Manager Labor Relations to General Chairman.

CARRIER'S EXHIBIT E - June 6, 1968 - Denial Manager Labor Relations to General Chairman.

CARRIER'S EXHIBIT F - March 21, 1969 - Denial affirmed Manager Labor Relations to General Chairman.

CARRIER'S EXHIBIT G - March 28, 1969 - Time limit extended to July 31, 1969 for further handling.

CARRIER'S EXHIBIT H - May 15, 1969 - Letter General Chairman to Manager Labor Relations.

(Exhibits not reproduced.)

OPINION OF BOARD: The basic facts are not in dispute. On the dates in the claims, an agent or clerk at Bloomington, Illinois, telephoned yard assignment reports to the operator in "Z" Office at Muncie, Indiana. There are no telegraphers stationed at Bloomington, Illinois. All telegraph work is performed by GM&O operators at Dean Tower, about one mile west of the agent's office.

This Yard Assignment Report was new. Effective January 1, 1968, a report of the following information was required:

A - Date

B - Job number

C - Starting time

D - Number of assignments worked

E - Overtime hours and minutes

F - Employees paid punitive rate for entire assignment

G - Number of cars handled

Employees contend that since the information was coded by letter, it is a "telegraphic report, the transmission of which, by telephone in lieu of telegraph, is reserved to telegraphers by their agreement." It is doubtful that the mere identification of information by an alphabetical letter constitutes a telegraphic message which by its very nature is reserved exclusively to telegraphers. What constitutes a telegraphic message, the transmission of which is reserved exclusively to telegraphers depends upon the nature and purpose of the message, and not whether or not it is coded and/or not whether

it is transmitted by telegraph or by telephone. A report which is a message of record, whether transmitted by telephone or telegraph, is a transmission belonging exclusively to telegraphers. Conversely, if it is not a message of record, telegraphers have no such exclusivity.

Employees have not established by competent evidence that the Scope Rule, or any other rule in the Agreement, reserves to the telegraphers the exclusive right to handle yard assignment reports. Nor is there any evidence in the record that this work has been reserved to them by history, custom and tradition.

The yard assignment reports are not messages of record. They do not affect the operation of trains, nor do they affect the safety of persons and property. Since they are not messages of record, they are not communications the transmission of which are exclusively reserved to telegraphers.

Upon the whole record, the Board concludes that there is no merit to the claims.

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 7th day of August 1970.