

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Paul C. Dugan, Referee

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**

**SOO LINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union on the Soo Line Railroad Company, that:

1. Carrier violated the Agreement between the parties when it failed to call the proper employees to perform required work on unassigned days.

2. Carrier shall compensate the Telegraphers named below as follows:

R. G. Berger, 1 call or 2 hours' punitive rate on Saturday, January 27, 1968,

J. G. Mersey, 1 call or 2 hours' punitive rate on Saturday, January 27, 1968,

D. D. Zimmerman, 1 call or 2 hours' punitive rate on Saturday, January 27, 1968,

T. D. Kretschmar, 1 call or 3 hours' punitive rate on Sunday, January 28, 1968,

C. J. Stancel, 1 call or 3 hours' punitive rate on Sunday, February 18, 1968.

**EMPLOYEES' STATEMENT OF FACTS:**

**(a) STATEMENT OF THE CASE**

The Agreement between the parties, effective July 1, 1956, as amended and supplemented, is the applicable Agreement in this dispute, and by this reference is made a part hereof. Said Agreement is available to your Board.

The claims here involved are the result of Carrier's failure and refusal to call the proper employees to perform work on unassigned days at one-man stations.

myself account section foreman calling Harvey for line up, myself claiming Rule 27, Section 1 (n) violated.

This is to advise that we do not agree with you and the claim will be further handled according to the provision of Rule 32 of the Telegraphers' Work Schedule Agreement.

Yours truly,

/s/ G. J. Stancel  
G. J. Stancel,  
Dist. Chairman No. 6"

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"TRANSPORTATION-COMMUNICATION EMPLOYEES UNION  
SOO LINE - GB&W - SYSTEM DIVISION NO. 73  
Office of General Chairman  
4917 Sixth Street N.E.  
Minneapolis, Minnesota 55421

April 2, 1968

My file: 286

Mr. D. L. Borchert  
Director of Personnel  
Soo Line Railroad Company  
Soo Line Building  
Minneapolis, Minnesota 55440

Dear Sir:

Herewith are papers regarding claims.

STATEMENT OF CLAIM:

1. Carrier violated the agreement when it failed to call the proper employees to perform required work on unassigned days.

2. Carrier shall compensate the Telegraphers named as follows:

R. G. Berger, 1 call or 2 hours punitive rate on Saturday, January 27, 1968; 1 call or 3 hours punitive rate on Sunday, January 28, 1968;

J. G. Mersey, 1 call or 2 hours punitive rate on Saturday, January 27, 1968;

D. D. Zimmerman, 1 call or 2 hours punitive rate on Saturday, January 27, 1968

T. D. Kretschmar, 1 call or 3 hours punitive rate on Sunday, January 28, 1968;

G. J. Stancel, 1 call or 3 hours punitive rate on Sunday, February 18, 1968.

Prior to August 1, 1939, there was no rule that required motor car operators on this property to obtain a lineup on trains before starting out on a trip. It was their responsibility, however, to keep clear of trains. This was ordinarily accomplished by listening and watching for smoke from approaching locomotives, flagging around curves, etc. It was also the custom to inquire of on-duty Telegraphers as to time of trains expected in the vicinity. It was also a practice to obtain the same information directly from Dispatchers by telephone.

On August 1, 1939, "Rules for Operator of Track Cars" were issued, and Rule 5 thereof stipulated that, "The person in charge of the operation of track cars must inform himself of the movement of trains when possible." Under this rule motor car operators continued to obtain oral information from both on-duty Telegraphers and Dispatchers.

It was not until April 1, 1945, that the rules were modified to provide that employes operating track cars were to "obtain information in writing regarding trains when practicable", and, on August 12, 1945, Form 386, Train Location Report, was put in use. "Practicable" was interpreted to mean that an Operator was readily available, employed, and on duty. Motor car operators continued their practice of obtaining lineups through alternate methods at all other times.

While track lineup disputes (and conflicting Awards) had begun to appear before the Board, it was not until issuance of Third Division Award 3671 that this subject became an issue on this property.

A dispute arising from the handling of a track lineup on Sunday, December 7, 1947, was progressed to the Board. On February 17, 1949, Referee Francis J. Robertson handed down sustaining Award 4320. This Award (which was vigorously attacked in a dissent by the Carrier members of the Board) turned—in Referee Robertson's words—on the issue of whether or not, ". . . under the circumstances, the work performed by the Section Foreman in this instance can be considered as the work of the Telegrapher at Otter-tail."

In 1962 the matter of Section Foremen, and others, handling track lineups again became an issue of dispute between the parties. This dispute was also referred to the Board, and on October 31, 1967, Referee Edward A. Lynch, in Award 15916, held that the Organization had failed to prove it had exclusive jurisdiction to the work involved on this property.

Copies of schedule agreement between the parties, effective July 1, 1956 and supplements thereto are on file with the Board and are made a part of this record by reference.

**OPINION OF BOARD:** The issue involved herein is whether or not Carrier violated the Agreement when it failed to use Claimants on their rest days, not a part of any assignment and not filled by relief employes, but instead used employes not covered by the Agreement to perform the work in dispute on said days.

This claim arose as a result of Section Foremen on the various dates involved obtaining train lineups from Operators at distant stations.

The Organization in support of its position relies on the so-called "Unassigned Work Day" Rule, Rule 27, The 40-Hour Week - Rest Day - Sundays - Holidays, Section 1, paragraph (n), which provides as follows:

"(n) Work On Unassigned Days. Where work is required by the Carrier to be performed on a day which is not part of an assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

The Organization contends that by history, tradition and custom, employees covered by the Telegraphers' Agreement are assigned the duty of handling lineups; that in 1943 the Carrier allowed a similar claim due to a section foreman calling the dispatcher direct to obtain lineups; that in Carrier's Circular No. 4, dated January 22, 1968, it gave instructions that overtime to agents obtaining track lineups outside of assigned hours would no longer be authorized, thus showing that without question that work of lineups is performed by employees covered by the Telegraphers' Agreement; that under the Rest Day Rules, work on rest days must be assigned by the formula: 1. To a rest day relief employee if one is assigned and available. 2. To an available and qualified extra employee. 3. To the regular employee on an overtime basis.

Carrier's chief defense to this claim is that the Organization has failed to prove that the handling of lineups on this property belong to telegraphers "exclusively" by history, custom and practice, system-wide.

Carrier, in support of its position, cites Award No. 15916 involving the same parties to this dispute, wherein in said Award this Board concluded that the Organization failed to prove that it had exclusive jurisdiction to the work involved on this property. Reference was made by the Board in said Award No. 15916 to Award No. 4320, in which this Board reached a different conclusion, without discussing the relationship and applicability of said Award No. 4320 in regard to the decision reached by the Board in said Award No. 15916. Further, the Board in Award No. 15916 only discussed and applied the Scope Rule of the Agreement in reaching its decision in said Award No. 15916.

This Board was confronted with an analogous situation in Award No. 17581, with the present referee sitting with the Board, involving the application of a general Scope Rule as in our instant dispute and a similar "Work On Unassigned Days" Rule. The Board concluded that Carrier violated the so-called "Unassigned Work Day" Rule, and cited Award No. 14703 of this Board in support of its conclusion, wherein it was stated: "We are inclined to accept the principle enunciated in those Awards which hold that Rule 10(m) is specific and prevails over any general rule, including the Scope Rules. Under this holding, the question whether the work belongs exclusively to the Agent-Operator becomes irrelevant because it is not a factor essential to the determination of the dispute. This, we believe, is the sounder, the more cogent and the more decisive principle relating to all of the factors concerning the 40-hour workweek and the related work rule on unassigned workdays."

Applying the principles set forth in said Award No. 14703 aforesaid, we find that Carrier violated the terms of Rule 27(n) involving "Work On Unassigned Days", and therefore we must sustain the claim.

"I have considered your position in respect to this case but do not agree that any rules of the applicable agreement were violated. Because the services of Signal Department employees were not indicated or required in this case, none were called out.

I do not find that the track forces involved in this claim performed any service not customarily performed by them or of a nature that is reserved exclusively to members of the craft you represent.

For the above reasons the claim is held to be without merit and is accordingly denied." (Emphasis ours.)

Following conferences of August 23 and September 19, 1968, the Manager-Labor Relations affirmed his denial of July 5, 1968, by stating, in part, in his letter of October 14, 1968. (Attachment "H.")

"I do not find that Engineering Department Circular No. 7, re-issued July 15, 1949, reserves the work in question to your craft."

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant filed his own claim with Carrier as follows: "Claim for 2 hours time at OT rate account welder and trackmen working on insulated joint, building railends and renewed bad fiber, without Signal employee present. Joint located on westbound track, south rail, around 300 feet west of Runnion Avenue crossing." The Organization thereafter relied upon the provisions of Circular No. 7, when the Organization's General Chairman, John Chatlock, in his letter of March 4, 1968 to Carrier's Regional Engineer, J. F. Holmberg, stated, in part: "Circular No. 7 issued May 21, 1941, and after several revisions, re-issued July 15, 1949, places the responsibility of inspecting these joints and the protection of the signal system on the signal maintainer. This practice has been followed in the past. . . ."

Carrier's Manager of Labor Relations, Howard Odom, by letter dated October 14, 1968 addressed to the Organization's General Chairman, Mr. Chatlock, stated in part: "I do not find that Engineering Department Circular No. 7, re-issued July 15, 1949, reserves the work in question to your craft. . . ."

Carrier sets forth two alleged procedural defects in regard to the processing of this claim, namely, (a) that the Organization failed to allege the violation of any Agreement rule by Carrier in the Statement of Claim, and (b) that the date cited in the Petitioner's Statement of Claim before the Board is not the same date involved on the property.

First, in regard to the alleged failure of the Organization to allege the violation of any rule in the Agreement by Carrier in the Statement of Claim, it is seen that this contention or charge was not at any time raised on the property by Carrier, and thus it cannot be now considered herein by this Board.

Second, in regard to different dates cited on the property and before this Board, we find that Carrier was not misled or prejudiced thereby so as to prevent Carrier from properly defending against this claim, and therefore this contention is without merit and must be denied.

In regard to the merits, the Organization, in its ex parte submission to this Board, for the first time alleges that the Scope Rule and Rules 4 and 5

of the Agreement were violated by Carrier in this instance. However, the Organization failed to allege that said Rules were violated on the property, and failing to do so prohibits this Board from considering herein such a contention or charge in the determination of this dispute.

The Organization on the property contended that Carrier violated Circular No. 7 as re-issued by Carrier. However, Circular No. 7 is not a rule of the Agreement, but merely instructions given by Carrier in regard to a particular aspect of the operations of its Railroad.

Therefore, inasmuch as the Organization has failed to sustain its burden of proving a rule violation, we must 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.

#### **AWARD**

Claim denied.

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

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1970.