



Award No. 19121

Docket No. TE-14944

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Herbert J. Mesigh, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP  
CLERKS, FREIGHT HANDLERS, EXPRESS AND  
STATION EMPLOYES**

**(Formerly Transportation-Communication Employees Union)**

**SOUTHERN PACIFIC COMPANY (Pacific Lines)**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines), that:

1. Carrier violated the Agreement between the parties when on June 16, 1962 and continuing each date thereafter as shown by the Carrier's records, work belonging to employees covered by the Telegraphers' Agreement was removed from the Scope Rule and the Carrier required or permitted a clerical employe, Hayden, Arizona, and a clerical employe at extension telephone No. 286, Tucson, Arizona, employees not covered by the Agreement, to handle communications of record consisting of train and enginemen time slips.

2. The Carrier shall compensate the following named employees accordingly:

a. Telegrapher Robert W. DeHart, Agent, Hayden, Arizona, or his successor, whose assigned hours are from 9:00 A. M. to 6:00 P. M., exclusive of one hour meal period, Monday through Friday, for one (1) special call on June 16, 1962.

b. Telegrapher E. L. Little, regularly assigned PMO #15 "UN" Telegraph Office, Tucson, whose assigned hours are from 10:00 A. M. to 6:00 P. M., Monday through Friday, rest days Saturday and Sunday, for one (1) special call on June 16, 1962.

c. On each date and each instance subsequent to June 16, 1962, wherein such violations of the Agreement are permitted by the Carrier at the locations named in this claim, the Carrier shall compensate the senior qualified regularly assigned telegrapher at the points that violations occur a special call as provided for in Rule 16, or eight (8) hours' compensation in instances where employees are observing rest days, whichever is applicable, at the minimum telegraphers' rate.

6. The fact that this happened the first time at Hayden in June 1962 is no different than the usual practice elsewhere on the property that has been in effect throughout the life of the current agreement and many years prior thereto.

7. By letter dated September 29, 1962, Carrier's Exhibit "B," Petitioner's District Chairman presented a claim to Carrier's Division Superintendent in behalf of Agent Telegrapher R. W. DeHart or his successor at Hayden and Printer Machine Operator-Clerk E. L. Little at Tucson each for a "special call" on date involved, and on each date subsequent to June 16, 1962, when similar work performed at location involved claim in behalf of the senior qualified regularly assigned telegrapher at locations where work performed for a "special call" under the regular call rule or for "eight hours' compensation" under the rest day call rule, whichever is applicable (no claimant named), asserting Carrier violated the current agreement when it permitted and continues to permit employes of another class or craft to handle information from time returns at Hayden and Tucson by telephone. By letter dated February 14, 1963 (Carrier's Exhibit "C"), the Carrier's Division Superintendent denied the claim.

8. By letter dated March 20, 1963 (Carrier's Exhibit "D"), the Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated June 6, 1963 (Carrier's Exhibit "E"), the latter denied the claim, stating in effect that the handling complained of was in accordance with long standing practice on the property and there was no basis for the claim submitted. The denial, through error in transcription, states conversation took place on date involved between clerk at Hayden and timekeeper at El Paso. The latter location should have read "Tucson."

(Exhibits not reproduced.)

**OPINION OF BOARD:** At Hayden, Arizona there is a position of agent-telegrapher, assigned 8:30 A.M. to 5:30 P.M. (one hour meal period), work week beginning on Monday, assigned rest days Saturday and Sunday, not filled on rest days. At Tucson, Arizona there is a telegraph office providing continuous service around-the-clock, seven days per week, with several positions under the Agreement.

On June 16, 1962, at 8:43 A.M., a clerical employe, Hayden, Arizona, telephoned a clerical employe at Tucson, Arizona, giving information from the Time Return & Delay Report of Engine Employes and Train Employes. The two reports involved were submitted by conductor and engineer of the train crew assigned to work at Hayden, covering services performed on last day of pay roll period, June 15, 1962.

Petitioner contends that the Carrier violated the agreement between the parties when work belonging to employes covered by the Telegraphers' Agreement was removed from the Scope Rule when Carrier permitted or required clerical employes, not covered by the agreement to handle communications of record consisting of train and enginemen time slips. That prior to February 1958, a Morse telegraph circuit known as Circuit No. 99 was maintained on the Tucson Division and was used by the telegraphers for handling business or messages of this nature until the telephone was substituted in lieu of Morse Circuit No. 99 in early 1958.

Carrier's position is that the telephone conversations subject of this claim, without the intervention of a telegrapher, is consistent with a long established practice on the property — a practice which antedates the Tele-

raphers' Current Agreement and their general Scope Rule by many years; that the said conversations were not "communications of record" as alleged by the employees.

Once again we must refer to Special Board of Adjustment 553 which involved these same parties and agreement which extensively reviewed prior awards of this Board involving these parties and in its Award 12 arrived at the conclusion that three different tests may be applied in determining rights of telegraphers to telephone communications on this property.

(1) relates to the control or movement of trains or safety of passengers or products.

(2) is a communication of record as that term has been used in the decisions, or

(3) by tradition, custom and practice on the property has been performed by telegraphers to the exclusion of other employees.

The telephone conversation related directly to payroll information which is certainly not a communication of record nor does it directly affect the control or movement of trains. The message transmitted by the clerk was informational in content only.

It seems like time memorial that the Board has consistently held that when the employees rely upon tradition, custom and practice, they must show by a preponderance of evidence, not merely that telegraphers customarily perform the type of work, but that they handle the messages to the exclusion of all others.

Petitioner has failed to sustain that burden of proof, wherein the type of messages in the case at bar, were handled by telegraphers to the exclusion of all others or by history, custom and past practice was reserved or assigned to them exclusively throughout the system.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of April 1972.

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