Award No. 19182

Docket No. TE-19005

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert A. Franden, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
(Formerly Transportation-Communication Division, BRAC)

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the transportation-Communication Division, BRAC, on the Illinois Central Railroad T-C 5762, that:

1. Carrier violated the terms of the Telegraphers' Agreement when it required or permitted a Section Foreman, Mr. T. E. Peters, and other employes not covered by the aforesaid agreement, to copy and handle line-ups by telephone at White Heath, Illinois, a location where an employe-covered by the Scope of the Agreement is employed during the time such next above referred to employe was off on March 4, 5, 6, 7, 11, 13 and 14, 1969; and,

2. Agent-Operator L. D. Riggins shall be compensated as provided in the "Call" Rule, Rule 11, part C and Rule 10(A).

EMPLOYES' STATEMENT OF FACTS:

(a) Statement of the Case

The dispute involved herein is based on provisions of the Collective Bargaining Agreement effective June, 1 1951, as amended and supplemented, between the Parties.

The instant claim arose because an Employe not covered by the Scope of the effective Agreement copied train line-ups at a location where the assigned Agent-Operator was off duty, but available to perform this work, The Employes contend that the work of handling line-ups at a location where an Employe covered by the Agreement between the Parties is assigned belongs exclusively to them and that the Agreement was violated each time an Employe not covered thereby performed this work. The Employes also contend that certain provisions of the Collective Bargaining Agreement require that the compensation requested be allowed for the violation set out in the record. These provisions are set forth in Section (d) — Rules Relied On.

violations where a non-covered employe copied train orders directly from the dispatcher, see Awards 5407, 5408, 5409, 5430. We have held that taking train orders from operators by parties not covered by the Agreement is not violative of the scope rule. See Award 18062 (Kabaker) and Award 16985 (Meyers).

The issue in the present case is different. Here we are concerned with whether Carrier violated the letter agreement by removing work from under the scope of this TCU Agreement and transferring it to non-covered employes. It is urged upon us that this case is sufficiently similar to Award 18997 (Dugan) so that it can provide precedent in the matter. In that case a similar Agreement was entered into. There is however, a substantial difference in the wording of the agreements. The wording of the Agreement in Award 18997 refers to **"work performed and positions occupied now"** which were not to be assigned to employes not covered by the Agreement. That wording is very specific. All one need do is ascertain the functions of the abolished position and determine whether any of those functions are being performed by a non-covered employe.

In the instant matter the letter agreement refers to the **removal of "Work from under the Scope of the Agreement"** and transferring it to non-covered employes. In that we have held in the past that the copying of a train order from an operator is not work which falls under the scope of the TCU Agreement we are estopped from finding here that the actions of the Carrier violated the letter agreement. Award 16985 referred to above and hereafter quoted correctly states the proposition upon which this award is based.

> "OPINION OF BOARD: The issue in this case is whether or not it is violative of the Telegraphers' Agreement for an employe of the Carrier who is not covered by the Telegraphers' Agreement to receive a train line-up at a station where a telegrapher is located but not on duty from a telegrapher at a distant location.
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> At the outset, it is observed that there has been a myriad of cases involving the question of whether the Scope Rule of the applicable Telegraphers' Agreement has been violated when an employe of a Carrier not covered by the Telegraphers' Agreement has received a line-up at a station where a telegrapher is located, either directly from a dispatcher or from a telegrapher at a distant station. The Awards in these cases are not only multitudinous but are also in hopeless conflict. About the most that can be said is that each Carrier appears to have its own history on this issue and the Awards seem to depend largely, but not entirely, on the respective histories.
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> As for this Carrier, there has been only Award No. 2934. In that Award, the Board decided that it was violative of the Telegraphers' Agreement when a dispatcher communicated a line-up to a non-telegrapher at a station where a telegrapher was located. While it must be conceded that statements can be found in Award No. 2934 that could be construed to mean that a non-telegrapher cannot receive a line-up even when sent by a telegrapher at a distant station, it cannot be denied that the facts in that Award were that a dispatcher communicated the line-up directly and not through a telegrapher. Therefore, the Board finds that the exact issue here in dispute has not been decided by this Board as to this Carrier.
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> That being so, the Board is here called upon to determine whether it makes a contractual difference as to this Carrier when a line-up

is received by a non-telegrapher from a dispatcher and when it is received from a telegrapher at a distant station. The Board notes that this distinction has been made in Awards regarding other Carriers and is persuaded that this distinction has merit. (See Awards Nos. 1552 and 1553 as to the Cleveland, Cincinnati, Chicago and St. Louis Railway Company and Award No. 15744 as to the Missouri Pacific Railroad Company). The distinction is particularly meritorious in the light of the more recent Awards in line-up cases which hold that the Organization must prove that the work in dispute has traditionally and exclusively been done by telegraphers in order that the Organization prevail in its case. (See, for example, Awards Nos. 10367, 15687, 15916, 15936, 16433, 16502, 16519, 16682, and 16685.) The Organization in this case has not met this burden of proof. Therefore, the claims in this case will be denied."

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 Employes involved in this dispute are respectively Carrier and Employes 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: E. A. Killeen
Executive Secretary

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

DISSENT TO AWARD 19182, DOCKET NO. TE-19005

This erroneous award demonstrates one of the currently prevalent weaknesses of the Adjustment Board: Failure of some referees to logically support their preconceived conclusions. Or, if there were no preconceived conclusions here, it shows the gross failure of the Referee to give sufficient attention to the facts to enable him to understand the issues.

These observations are clearly supported by the manner in which the award is constructed. It first sets out—correctly—the facts and the agreement provision which gave rise to the claim and its resultant dispute.

But the rest of the award bears little resemblance to a discussion of those facts and the agreement provision involved. First, the Referee erron-