Award No. 19194
Docket No. TE-19174

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Fort Worth and Denver Railway, T-C 5794, that:

CLAIM No. 1

1. Carrier violated the Agreement between the parties when, on September 22, 1969, it caused, required and/or permitted an employe not covered thereby to use the telephone for the purpose of handling (transmitting) a communication of record at Lubbock, Texas.

2. Carrier shall, as a result, compensate M. L. Boone, 2nd shift Operator, Lubbock, Texas, a three hour call at pro rata rate of his assignment.

CLAIM No. 2

1. Carrier violated the Agreement between the parties when, on October 14, 1969, it caused, required and/or permitted an employe not covered thereby to use the telephone for the purpose of handling (transmitting) a communication of record at Lubbock, Texas.

2. Carrier shall, as a result, compensate H. L Morrow, 1st shift Operator, Lubbock, Texas, a three hour call at pro rata rate of his assignment.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

There is in evidence an Agreement between the parties, dated December 1, 1955, as amended and supplemented, which is on file with your Board and by this reference is made a part hereof.

The two claims here involved were timely presented, progressed, including conference with highest Carrier officer to whom appeals are made, and have

to give the dispatcher the necessary information so that the dispatcher could issue a slow order to all concerned.

CLAIM NO. 2

On the date of October 14, 1969, Roadmaster O. W. Carlson inspected the carrier's line from Childress to Lubbock due to heavy rains and soft track conditions. At Petersburg, Texas, the roadmaster discovered that the House Track had a one inch wide gauge on the curve at the crossing at the depot and the track section was filled with dirt to the top of the rail. He also noted a side movement of the rail which to his experienced viewpoint indicated a weak tie condition. Upon arrival at Lubbock, about 28 miles distant, Roadmaster Carlson notified his track supervisor, C. R. Gulledge, of the track condition and told him the track should be taken out of service. Mr. Gulledge, who was staying at the Johnson House Motel, immediately endeavored to call the operator who was on duty at Lubbock at the time, but after several attempts to call him and finding the telephone busy each time, Mr. Gulledge called the train dispatcher at Fort Worth and advised him to take the track at Petersburg out of service. Although Mr. Gulledge was not obligated or required to do so, he tried on several occasions before 8:00 P. M. to contact the operator, but when all else failed he resorted to past practices to call the train dispatcher direct by whatever means available; and, there was urgency in this particular instance because train No. 77 was getting ready to depart and the track supervisor did not want the train to leave Lubbock without knowledge of the fact that the house track at Petersburg was not in service. No. 77 had been called for 7:30 P. M., the dispatcher issued the slow order which was completed to Lubbock at 8:16 P. M., and No. 77 left Lubbock at 8:35 P. M. with knowledge of the track condition at Petersburg.

The carrier maintains two shifts of operators at Lubbock, Texas, each being a five-day position with Saturdays and Sundays assigned rest days. The shifts are assigned as follows:

First Shift 7:00 A. M. to 3:00 P. M. Incumbent H. L. Morrow
Second Shift 3:00 P. M. to 11:00 P. M. Incumbent M. L. Boone

Agreement between the Fort Worth and Denver Railway Company and Transportation-Communication Division, BRAC, (former Order of Railroad Telegraphers), effective December 1, 1955, is on file with the Board and by reference is made a part of this submission.

OPINION OF BOARD: The Organization contends that Carrier violated the provisions of Rule 1 — "Scope" of the Agreement when it permitted a non-telegrapher — the agent at Lubbock, Texas, when a telegrapher was not on duty, on September 22, 1969, at approximately 4:00 A. M. to use the telephone in transmitting a message from a track supervisor to the train dispatcher at Fort Worth, Texas, as follows:

> "Trains must not exceed 10 MPH between MP L348.70 to MP L348.80 between MP L353.67 to MP L353.80 account soft track. No boards at these locations."

Thereupon a train order was issued to the operator at Childress, Texas and later to the operator at Lubbock, Texas when he reported for duty at 7:00 A. M.

The Organization is also contending that Carrier violated the Scope Rule of the Agreement when on October 14, 1969, at approximately 8:00 P. M., when a telegrapher was on duty, track supervisor, C. R. Gulledge, used the telephone at Lubbock in transmitting the following message to the train dispatcher at Fort Worth:

"C & E Eastward train — Lubbock
House track at Petersburg cannot be used.

B.G.G."

The Organization argued on the property that Rule 1 conveys the absolute right of transmitting and receiving communications of record to employes covered by the Telegraphers' Agreement and historically it has been recognized that employes covered by the Telegraphers' Agreement are exclusively entitled to perform the work of handling communication of record.

The Organization, on the property and before this Board relied solely on the alleged violations by Carrier of Rules 1 (Scope), 2 (Classification), and 5 (Calls).

It is to be noted that the Organization did not at any time on the property or before this Board contend that Rule 32 of the Agreement was violated.

Therefore, we must look to the Rules raised on the property by the Organization to see if Carrier violated them in this instance.

Rule 2 (Classification) does not, we find, give the work in dispute herein exclusively to telegraphers.

Thus, if the Carrier committed a violation concerning this claim it would be in regard to Rule 1 — the Scope Rule.

Rule 1(a) lists the positions and not the work. Rule 1(b) provides that "improvements or changes in the manner of handling train orders or communications of record shall not operate to take that work out from under this agreement."

Although we find that the messages in dispute that were transmitted by non-telegraphers in this instance were in effect "train orders," we find that Rule 1(a) and (b) did not reserve the work "exclusively" to telegraphers. This Board in Award No. 16433, involving the same parties as in this dispute, in interpreting the same Rule 1(b) as before this Board, concluded that "communications of record" were not reserved exclusively to telegraphers.

Therefore, we find that petitioners failed in this instance to prove that the work in dispute is exclusively reserved to telegraphers and we must thus 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 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

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