

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21786
Docket Number CL-21821

John P. Mead, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and
(Steamship Clerks, Freight **Handlers**,
(Express and Station **Employees**
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8211, that:

1. Carrier violated the Agreement between the parties when on the dates of December 6, 11, 12, 1973 and **January** 15, 1974, it caused and permitted train service employees performing flagging duties, employees not covered by the Agreement, to use the telephone at **Swanton**, Maryland for the purpose of securing location of train information for the protection of **workmen**, equipment and material of the American Bridge Company.

2 . Carrier shall, as a result, compensate Clerk-operators **P. H. Filsinger**, **H. C. Bittinger**, **S. E. Butt, Jr.**, and **S. E. Butt, Jr.**, eight (8) hours' pay for the dates of December 6, 11, **12**, 1973 and January 15, 1974 respectively.

OPINION OF BOARD: **Employees'** initial claim alleges that, "The Carrier by instructing or permitting a Train Service **employee** to perform work exclusively assigned to the Clerical Craft did violate Rule 66 and other rules of the Clerks' Agreement." In Petitioner's Submission to this **Board**, **Rule 1** (Scope Rule) was specifically mentioned as supporting the claim of agreement violation, but Rule 1 is a general description of the employees covered by the agreement and, unless the specific work function in dispute is covered by **Rule 66**, the claim must be denied.

Interpretation to Rule 66 reads:

"During period of construction, other than railroad construction, such as repairing or rebuilding highways, bridges, grade crossing elimination, etc., where contractors or others engaged in construction work require information by use of telephone regarding location of trains, etc., for the protection of workmen, construction equipment, etc., the provisions of this Rule will apply and employees covered by this Agreement will be utilized.

"This interpretation is not intended to change existing practice of Maintenance of Way men obtaining such information by telephone when it is necessary to open the track for maintenance, repairs, etc."

On four occasions between December 6, 1973 and January 15, 1974, Trainmen who were performing flagging duties telephoned the Clerk-Operators, claimants herein. Carrier contends the calls were for the sole purpose of obtaining permission from the Dispatcher for American Bridge Company to move equipment on trucks along Carrier's right-of-way to its construction site several miles away from Carrier's property.

Employees' initial claim states that American Bridge Company "required flag protection for their **employees** and equipment." It further states **that** the call was made to secure information concerning the movement of trains. Carrier denies that the contractor required flag protection or train movement information.

There is no evidence **in** the record before this Board in support of the claimant's allegation that the contractor required information regarding the location of trains for the **protection of** his workmen or equipment. Any such information was required only by the Carrier, which cannot reasonably be considered to be a "contractor(s) or others engaged in construction work."

Nor is there any evidence that the contractor initiated a request for flag protection, as alleged in Petitioner's submission.

The Board concludes that the language of Rule 66 does not cover calls of the type made in this case.

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

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The Agreement **was** not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT BOARD**
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 18th **day** of November 1977.