

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (EASTERN LINES)**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, on the Atchison, Topeka and Santa Fe Railway that, in permitting and/or requiring section and/or extra gang foremen on the Missouri Division to regularly use the telephone in securing line-ups and/or positions of trains from the train dispatcher, the Carrier has violated Article II, paragraph (a), of the Telegraphers' Schedule."

JOINT STATEMENT OF FACTS: The parties jointly certified to the following Statement of Facts:

"On December 31, 1936, a representative date, the train dispatcher, who is required to do so and make record thereof, transmitted simultaneously by telephone at or near 7:15 o'clock A. M. to section and/or other foremen at stations,

New Boston	(a closed station)
Argyle	(telegraph service maintained 7:30 A. M. to 4:30 P. M.)
Dumas	(a closed station)
Wyaconda	(telegraph service maintained 8:00 A. M. to 5:00 P. M.)
Gorin	{ " " " " " " " }
Rutledge	{ " " " " " " " }
Hurdland	{ " " " " " " " }
Gibbs	{ " " " " " " " }
Cardy	(a closed station in charge of caretaker)
Elmer	(telegraph service maintained 8:30 A. M. to 5:30 P. M.)
Ethel	{ " " " " " " " }
Hart	(a closed station in charge of part-time agent)
Bucklin	(telegraph service maintained 7:30 A. M. to 4:30 P. M.)

"a line-up or position of trains which would govern the movement of such section and/or extra gangs; a record being made thereof. The telephones used by foremen are either located in the station building or facility adjacent thereto. A representative copy of a line-up, carrying the signature of the trainmaster, reads:

'Extra west called Marceline 9:30 A. M.
Extra west called Marceline 10:00 A. M.
No. 15 on time. No. 16 out Bosworth 9:12 A. M.
No. 10 on time. Extra 4082 at Camden.
Extra east reported Bosworth 9:46 A. M.
Extra 4077 east called Argentine 8:15 A. M.
Two more extras out of Argentine behind 4077.' "

OPINION OF BOARD: The preceding award, No. 603, involves a closely related situation, and it is suggested that the Opinion therein be considered along with that here involved.

The facts in the instant case are that there is a regular established daily practice at thirteen stations on one division of the carrier, at nine of which stations telegraph service is maintained but commencing at a later hour, of having section foremen come in on telephones, located at these stations, to receive simultaneously from the dispatcher a line-up or position of trains intended to govern the movement of such section and extra gangs during the day. This line-up is received by them at 7:15 A. M. and made a matter of record. At two stations telegraphic service begins fifteen minutes later, at five others it begins forty-five minutes later, and at the other two an hour and fifteen minutes later. Two of the remaining stations are closed stations, one in charge of a part time agent and the other in charge of a caretaker. At each of these stations from one to three telegraphic positions have been abolished.

It is the contention of the organization that this is clearly work covered by the telegraphers' agreement, that it heretofore has been handled by telegraphers, and is so handled elsewhere on the system.

The carrier dwells at length on the safety aspect involved, asserts that it has been the practice for years for section men to use the 'phone to call operators or dispatchers for information concerning train movements, and to comply with the organization's demand that the work be handled by telegraphers would require the carrier to install additional positions at each of these stations, inferentially solely to take care of this work.

There were cited awards 109, 184 and 244 of this Board. Award 109 was a case involving two incidents unusual and widely separated in point of time, and exactly the opposite of the regular daily practice here involved. Award 184 involved the application of a special rule of the agreement there in issue—Article 21. The main question was whether the form in use constituted a train order. It was in use not only by conductors but by linemen, section foremen, and other employes in charge of motor cars. The rule in question prohibited the handling of train orders by conductors, except in certain emergencies. The case was not progressed under the scope rule or general principles but directly under this rule, and since the limitation mentioned conductors only the award appropriately was confined thereto. It is not authority to the effect that section foremen or linemen may regularly handle either train orders or messages without violating the telegraphers' schedule. Award 244 deals with a permissive rule involving the displacement of operators, but in any event it sustains the contention of the organization that work coming under its agreement may not be performed by other employes.

The suggestion that the carrier will be compelled to establish additional positions at each of these stations, if this Board should order a cessation of the practice, is obviously unsound. If the handling of these line-ups cannot be done at the time desired by changing the assigned hours of the telegrapher presently on duty, it at least could be handled by the payment of fifteen minutes in two cases, forty-five minutes in five cases, and an hour and fifteen minutes in two cases, of overtime. The conclusion is warranted that the object and effect of the arrangement is the evasion of the overtime and call rules of the agreement.

What has been said hereinbefore is not intended to affect the established practice of section and extra gang foremen using telephones occasionally—but not as a regular practice—at outlying points where no operator is available, for the purpose of obtaining instructions and information concerning their work. These cases clearly do not fall within that category.

The carrier makes a further contention that the complaint is outlawed by paragraph (i) Article V of the agreement. The complaint is concerning a continuing violation of the agreement and does not involve any claim for reparation. The contention is therefore without merit.

This board, and others, have held, in many decisions, that work of a class covered by the agreement belongs to the employees upon whose behalf it was made and cannot be delegated to others without violating the agreement. It is considered that the instant case directly conflicts with that principle.

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 the facts of record show a violation of the telegraphers' Agreement, and the practice should be discontinued.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1938.