

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway that (a) the practice of the carrier in permitting and/or requiring Section Foremen to regularly secure line-ups or positions of trains by telephone direct from the dispatcher at small non-telegraph agencies such as Sibley, Missouri and Coyville, Kansas is in violation of the Telegraphers' Agreement and shall be discontinued; (b) that the existence and use of telephones at Sibley, Missouri and Coyville, Kansas for telephone communication purposes classifies those positions as agent-telegrapher positions and entitles the incumbents to retroactive reimbursement as such since their improper reclassification to small non-telegraph agent; and (c) employees who have occupied or are occupying such agencies be compensated under the call and overtime provisions of the Telegraphers' Agreement for each occasion train line-ups have been secured by Section Foremen outside of the agent's assigned hours."

EMPLOYES' STATEMENT OF FACTS: "An Agreement bearing effective dates of February 5, 1924, and August 1, 1937, as to rules of working conditions and rates of pay respectively exists between the parties to this dispute.

"The Telegraphers' Schedule shows the following:

STATION	POSITION	RATE
Sibley	Agent-S.N.T.	.56¢ per hour
Coyville	Agent-S.N.T.	.56¢ per hour

"Telegraph and or telephone facilities were removed from the station building at each of these locations, being re-located in booth or some other type of building adjacent to the station building.

"Section foremen are required and/or permitted to regularly make use of these telephone facilities in securing direct from train dispatchers, lineups or positions of trains, during or outside of the agent's assigned hours at Sibley, Missouri. At Coyville, Kansas, the same requirement was in effect up to and including October 20, 1938."

CARRIER'S STATEMENT OF FACTS: "The parties are agreed that as a condition precedent to the reclassification of a telegraph or telephone agency to the classification of small non-telegraph non-telephone agency, all telegraph and telephone instruments must be removed from the depot, following which the Telegraphers' Schedule employe is not thereafter required to perform telegraph or telephone service inasmuch as there are no facilities

cerning the use of the telephone by the section foremen, which makes it obvious that the existence and use of the telephone for the purpose indicated was conceded by the Organization as not requiring the continuance of a telegraph or telephone agency nor of preventing the classification to a non-telegraph agency.

"In addition to the foregoing, the employees in the 1938 Schedule agreed that the two points in issue were properly small non-telegraph, non-telephone stations. All the facts now relevant were before them when they made that agreement. They should not be allowed to repudiate that agreement now.

"Originally the case was presented to the Carrier on the ground that the Carrier's action was in violation of Award 604, Docket TE-573. That basis was abandoned following withdrawal by the Organization from the Board of a request for an interpretation of the Award.

"Award 604 held that at the nine (9) stations named therein in which there were telegraph or telephone facilities located and an employe covered by the Telegraphers' Schedule assigned and required to use such facilities, who on that account was designated as telegrapher, that when such Telegraphers' Schedule employe is available or can be made available by changing his assigned hours to comport with those of the section foremen or have a telegrapher work some overtime he should be used to secure the line-ups on trains for the section foremen. The Carrier is inclined to the belief that this ruling of the Board finds its basis in the 'Position of Carrier' in Docket TE-573, Award 604, to wit: 'Where telegraph or telephone service is maintained it is the practice of the employe subject to the telegraphers' agreement to secure proper line-ups of trains for section and extra gang foremen.'

"The Board seemingly reasoned that without the imposition of an extreme penalty the Carrier could amplify its practice as set forth in the above quoted language in Docket TE-573. The Board also seemingly felt that in the circumstances present at the nine (9) offices of communication named in Award 604 the Carrier had departed from its stated practice. It is felt that the Board erred when they stated in the 'Opinion of Board' in Award 604 that:

"The conclusion is warranted that the object and effect of the arrangement is the evasion of the overtime and call rules of the agreement."

for the reason that the 'Call Rule' as embodied in paragraph (c) of Article III of the respective Telegraphers' Schedules effective February 5, 1924, and December 1, 1938, provide only for the payment which shall be made when and if employees covered by that agreement are called for service and does not even by intimation require the Carrier to call them and is in no way a guarantee that work will be offered.

"If by the use of the words 'such as' in Section (a) of the Organization's claim and the words 'such agencies' in section (b) of that claim (this latter being Section (c) of the claim as filed with the Board by the Organization) the Organization is indicating that other stations than Sibley and Coyville are involved in this claim, the Carrier protests the inclusion of any station not only not specifically named but which has not been handled with the Carrier in conference under the applicable article of the Telegraphers' Schedule governing the handling of disputes. The Carrier insists that the claim must be restricted to the two (2) stations specifically named, viz., Sibley and Coyville, and no others, the records disclosing that they are the only ones discussed with the Carrier in conference. Award 906, Docket SG-803, is in point.

"The facts of record call for a denial of the claim."

OPINION OF BOARD: The claim, the rules and the contentions of the parties appear above. Briefly, the agreement lists two stations, Sibley, Missouri, and Coyville, Kansas, which formerly had been telegraph stations, as

Small Non-Telegraph. When those positions were made non-telegraph, all telegraph and telephone facilities were removed from the station building, but the telephonic facilities were relocated in a booth or other type of building adjacent to the station building. When these stations were telegraph offices, line-ups or positions of trains were, of course, secured through telegraphers in charge thereof, but after the stations were made non-telegraph, section foremen were permitted to obtain the required information by direct communication with train dispatchers.

The question is, Does the action of the carrier in thus communicating orders through its train dispatchers directly to section foremen violate the agreement? We are disposed to answer in the affirmative. See Award No. 604, which is to the effect that work of the class involved here comes within that which the agreement says belongs to railroad telegraphers, and its delegation to others violates the agreement. Among other Awards of like import are Nos. 919 and 941.

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 violation of the telegraphers' agreement at the two stations here involved has been established.

AWARD

Claim sustained subject to the application of Article V (i) as to retro-active payment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of December, 1940.

Dissent to Award No. 1261—Docket No. TE-1084

This award, as shown by the Opinion upon which it is founded, is in error because it rests upon misapprehension of a former award (No. 604) and upon incomplete recognition of the facts of record rather than upon the agreement between the parties and the complete factual situation relating to the question of section foremen securing line-ups of trains at the two named stations in this case.

The Opinion states that "all telegraph and telephone facilities were removed from the station building but the telephone facilities were relocated in a booth or other type of building adjacent to the station building" when these telegraph stations were made non-telegraph. The Opinion then proceeds to say, supported by Award No. 604, that the securing of line-ups thereafter direct from the train dispatchers violated the agreement.

The facts were that four telephones at one of the stations (Sibley) were in use for from more than seven years to almost four and one-half years

prior to December 31, 1936, the date the parties had agreed in the docket covered by Award 604 as the representative date on which section foremen secured line-ups on trains from the train dispatcher. At the other station (Coyville) a telephone had been used by the Section Foreman for more than three years prior to December 31, 1936 to secure line-ups from the train dispatcher. This practice followed the abolishment of Coyville as a telegraph agency.

Contrast those situations with those stated in the Opinion in Award 604 as basis for sustaining the claim in that case. There, with the representative date of December 31, 1936 before the Division as an agreed-upon date when the train dispatcher gave line-ups to Section Foremen, the Opinion after describing the existence of telegraphic positions at 9 of the 13 stations involved and of closed stations otherwise proceeds to suggest that the handling could be arranged by either changing the hours of assignments of telegraphers now employed or by payment for minor periods of overtime ranging from fifteen minutes to one hour and fifteen minutes, and thereupon concludes that the "object and effect of the arrangement is the evasion of the overtime and call rules of the agreement." And from those circumstances,—of train line-ups being given by train dispatchers to Section Foremen as of the given date of December 31, 1936 at stations where telegraphers were employed with opportunity for slight change in their working period or small payments for overtime,—providing the basis for the opinion that "evasion" was the object of the procedure, Award 604 held the work at the locations there involved to have been such as belonging to the Telegraphers and a violation when there permitted to be done by Section Foremen.

The contrast with the circumstances of the instant case is obvious: Here at the two stations named in this claim, the like procedure had been followed for periods ranging from seven (7) years to three (3) years prior to December 31, 1936, the date which was stipulated in the docket of Award 604 as one when the procedure was in effect, and upon which occasion, incidentally, the procedure at the two stations here involved was not contested. Nevertheless, the instant award, ignoring those distinguishably different facts, assumes to say that Award No. 604 declares "to the effect that work of the class involved here comes within that which the agreement says belongs to railroad telegraphers, and its delegation to others violates the agreement."

Thus arises the error in this award: Award No. 604 made such declaration upon the basis of the preceding portion of its Opinion describing the circumstances which caused the particular work there involved to represent evasion and thus violation of the Telegraphers' Agreement. Whether it was sufficient justification in that case for the decision reached need not here be discussed. Certainly it was not the basis for reaching a conclusion that work under the distinctively different circumstances of the instant case was that "which the agreement says belongs to railroad telegraphers."

This lack of distinguishment in citing a previous award as basis for decision, coupled with the non-recognition of the complete factual situation reflecting that the practice and work here involved was and is an unquestioned part of the duties of Section Foremen, truly evident of the meaning of the agreement as applied to the immediate dispute, naturally leads to this unjustified award, and to the necessity of here indicating its improper unwarranted imposition of impractical requirement upon the Carrier.

S/ C. P. DUGAN
S/ R. F. RAY
S/ R. H. ALLISON
S/ A. H. JONES
S/ C. C. COOK