

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Atchison, Topeka & Santa Fe Railway that, the agent-telegrapher at Pauline, Kansas, is entitled under the provisions of Telegraphers' Agreement, to a call for each day since June 5, 1939, on which the Section Foreman at Pauline, Kansas has, without calling upon the agent-telegrapher for that purpose, and while said agent-telegrapher was not on duty, himself, secured and copied by telephone from other offices communications of record, viz., train lineups."

EMPLOYES' STATEMENT OF FACTS: "An Agreement bearing effective date of December 1, 1938 as to rules and rates of pay exists between the parties to this dispute and a copy thereof is on file with the National Railroad Adjustment Board.

"The wage scale of the Telegraphers' Schedule lists positions,

Topeka Second Street—Telegrapher-towerman (3)	68¢ per hr.
Pauline Agent-telegrapher	60¢ per hr.

"Pauline, Kansas is located approximately seven (7) miles to the south and west of Topeka. The assigned hours of the agent thereat are 7:30 A. M. to 4:30 P. M. with one hour for meal between 11:30 A. M. and 1:30 P. M. on week-days and on Sundays not assigned.

"The Carrier permits and/or requires the section foreman at Pauline, outside the agent's assigned hours, to call Second Street Tower telegraph office via commercial telephone to secure train lineups or positions of trains. The telegrapher-towerman at Second Street Tower secures such information from the dispatcher and the superintendent's name is signed to such communication."

POSITION OF EMPLOYES: "The Telegraphers' Schedule reads in part:

"This Schedule will govern the employment and compensation of

Agent-telegraphers,
Agent-Telephoners,
Telegraphers,
Telephone Operators (except Switchboard Operators),
Towermen,
Levermen,
Tower and Train Directors,
Block Operators,
Staffmen,

service in all cases where the interval of release from duty does not exceed one (1) hour.

'(f-2) Exceptions to the foregoing paragraph shall be made for individual positions when agreed to between the Management and duly accredited representatives of the employees. For such excepted positions the foregoing paragraph shall not apply.

'(f-3) This rule shall not be construed as authorizing the working of split tricks where continuous service is required.

'(f-4) Intermittent service is understood to mean service of a character where during the hours of assignment there is no work to be performed for periods of more than one (1) hour's duration and service of the employees can not otherwise be utilized.

'(f-5) Employees covered by this rule will be paid not less than eight (8) hours within a spread of twelve (12) consecutive hours.'

and it is also maintained that Award 604 of the Third Division of the National Railroad Adjustment Board covers what is termed a general dispute. In this connection, the Carrier wishes to point out that in taking this claim to the Third Division of the National Railroad Adjustment Board with notice of intention to file within 30 days of November 9th, 1939 an Ex Parte submission, the Organization's 'Statement of Claim' does not even go so far as to allege even a violation of the Schedule.

"Neither the alleged Scope Rule nor Articles II and III of the Telegraphers' Schedule effective December 1, 1938 have even the most remote bearing on the instant claim and it is most difficult to understand upon what basis the Organization can further pursue such a claim. The facts of record call for a denial of the claim.

"All that contained herein has been available to the employees and/or their representatives.

"Under the rules of the Board the Carrier has not been permitted to see the Position of the employees prior to the time the Board requires this answer to be filed. Under such circumstances the Carrier reserves the right to make further reply at or prior to the time of the hearing."

OPINION OF BOARD: Pauline, Kansas is located approximately seven (7) miles to the south and west of Topeka. The assigned hours of the agent thereat are 7:30 A. M. to 4:30 P. M. with one hour for meal between 11:30 A. M. and 1:30 P. M. on week-days and on Sundays not assigned.

The Carrier permits and/or requires the section foreman at Pauline, outside the agent's assigned hours, to call daily Second Street Tower telegraph office via commercial telephone to secure train line-ups or positions of trains. The telegrapher-towerman at Second Street Tower secures such information from the dispatcher and the superintendent's name is signed to such communication.

The only distinction between the instant case and Award 604 is that in this case the section foreman at Pauline secured the line-ups or positions of trains from the Second Street Tower telegraph office located at Topeka, while in Award 604 the line-ups were secured from the dispatcher. (The Board is of the opinion that the result is the same if either a commercial or company telephone is used. See Award 849.)

At the hearing of the parties before this referee, a representative of the carrier cited to the Board Award 1145. In that case, during the period of the day while the telegrapher at Gregg, Ohio was not on duty an operator daily (from October 1938 to April 1939) received the line-ups of trains from the stations that were on either side of Gregg. This Board held in that award that there was no violation of the agreement.

During the hearing before this referee, the representative of the carrier stated that in principle there could be no distinction between Awards 604 and 1145 and that one or the other should be overruled (he contending that Award 604 should be overruled). The Board agrees that, in principle, there is no distinction between Awards 604 and 1145, but that the weight of authority of the awards of this Board sustain Award 604 and it should be followed.

It therefore follows that the agreement has been violated and the claim should be sustained from June 5, 1939 to the date the practice was discontinued.

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 employe involved in this dispute are respectively carrier and employe 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 there was a violation of the Telegraphers' Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1940.

Dissent to Award No. 1283—Docket TE-1146

This award is in error because it relies upon a former award, No. 604, the Opinion in which was incompletely comprehended, and upon the incomplete recognition of the facts of record rather than upon the agreement between the parties and the circumstances which surrounded the negotiation of that agreement relating to the unquestioned procedure and right of action of section foremen securing line-ups of trains in protection of their duties, and the lives of the men entrusted to their care as well as the lives of others.

The fallacy of upholding claims of Telegraphers for such inherent duties of section foremen is set forth in dissents to Awards Nos. 1261 and 1268, which dissents are hereby made a part of the dissent to the instant award.

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