

Award No. 1320

Docket No. TE-1271

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

(Wilson McCarthy and Henry Swan, Trustees.)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Denver and Rio Grande Western Railroad, that Agent-Telegrapher D. Rasmussen, Ephraim, Utah, be paid under the call rule of the Telegraphers' Agreement for 27 instances during November and December 1939 in which the section foreman at his station during the time Mr. Rasmussen was not on duty, copied by telephone from other points, lineups which Agent Rasmussen should have been called on duty to secure."

EMPLOYES' STATEMENT OF FACTS: "Ephraim, Utah, is a station located on the Marysvale Branch of the Denver and Rio Grande Western Railroad Company. This branch line extends from Marysvale, Utah to a connection with the main line at Thistle, Utah 132.8 miles. The Agent-Telegrapher at Ephraim is assigned 9:00 A.M. to 6:00 P.M. daily except Sunday. On various dates, October 26, 1939 and subsequent thereto, Section Foreman, prior to the time the Agent-Telegrapher came on duty at Ephraim, called the Agent-Telegrapher at Manti, 7.4 miles east of Ephraim, and secured lineup (location) of trains before proceeding with motor car. Claim was made the Agent at Ephraim should be compensated under the Call rule on the ground that he should have been used to perform this work but the claims were disallowed."

POSITION OF EMPLOYES: "The Telegraphers' Scope Rule No. 1, effective as to rules January 1, 1928, reads as follows:

"This Contract will govern the employment and compensation of Telegraphers, Telephone Operators (except Switchboard Operators), Agent-Telegraphers, Agent-Telephoners, Levermen, Tower and Train Directors, Block Operators, Staffmen and Agents except the positions of Agents at Denver, Colorado Springs, Pueblo, Salida, Leadville, Alamosa, Grand Junction, Salt Lake and Ogden, and will supersede all previous schedules, agreements and rules thereon."

"Rule 6, CALL RULE, is quoted below:

"(A) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis. Employees shall not be required to work after regular assignment more than two (2) hours without being permitted to go to meals.

(3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis.'

"The practice with respect to bridge and building foremen, section foremen, and other employes not covered by the scope rule of the telegraphers agreement receiving lineups from the train dispatchers or telegraphers has existed on this property as well as on many other railroads for many, many years. The Carrier does not agree that there is any violation of schedule rules or settlements made in connection therewith in train dispatchers or telegraphers giving lineups to employes using motor cars and other forms of track cars as a part of their duties and services in connection with their jobs.

"Rule 2—Handling train orders—of the current agreement with the telegraphers reads:

'No employes other than covered by this contract and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where a telegrapher is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call.'

"It is well understood by all that lineups are not train orders, and it will be observed from the plain reading of this rule that while no employe except those covered by the telegraphers agreement or train dispatchers will be permitted to handle train orders at telegraph or telephone offices where a telegrapher is employed and is available or can be promptly located, except in an emergency, there is nothing in this or any other rule of the agreement which prohibits section foremen or other employes using motor or other forms of track cars in the performance of their duties from securing lineups.

"As heretofore stated, the practice of section foremen and others of securing lineups from the train dispatcher or telegraph operator has been of long standing, and it has been considered proper for employes to secure information regarding train movements, and it has never heretofore been considered a violation of the telegraphers agreement.

"The carrier has never considered and so far as is known the organization has never heretofore considered the information such as section foreman and others received on lineups as being a violation of the telegraphers' agreement.

"The Carrier contends this dispute is in effect a request for a new rule and, therefore, is not a proper case to present to your Board as a violation of the telegraphers' agreement, and protests the Board assuming jurisdiction in the instant case."

OPINION OF BOARD: The facts are not in dispute, and are fully disclosed in the foregoing statement of facts

The facts and applicable rule are identical, so far as controlling principles are concerned, with those in Award 1145. This referee is impressed with the reasons set forth in support of Award 1145 and would be content to rest this award upon the mere citation of the prior award were it not that Award No. 1283 in effect overruled Award 1145.

Without in any manner affirming Award 604, this referee states as his opinion that there is a distinction in the controlling facts between Award 604 and Award 1145. Under the facts presented in Award 604 the telegraphers were eliminated entirely from the work of receiving the lineups from the train dispatchers and transmitting them to the motor car operators. Such was not the situation under the facts presented in Award

1145, nor is it the situation under the facts of the present dispute. The question of the exclusive right of the telegraphers to receive lineups from train dispatchers was not involved in Award 1145, nor is it now involved. The only question now presented is the right of the section foreman to obtain the lineups by use of the telephone from employees covered by the Telegraphers' Agreement.

Certainly, it is no violation of the Scope Rule of this agreement for the section foreman to obtain these lineups from an agent-telegrapher, so the only remaining question is whether the Scope Rule is violated in the use of the telephone by the foreman in obtaining the information. As stated in Award 1145, "It is common knowledge * * * * * that not all telephone communication is subject to the Telegraphers' Agreement." We think it clear that the Scope Rule of this agreement was not intended to prevent a section foreman getting his lineups by telephone. Should we hold otherwise it would be necessary to maintain a telegrapher wherever lineups are found to be necessary, and clearly such a requirement was not within the contemplation of the parties at the time the agreement was signed. In this connection we might add that the practice of which the present claim forms a part antedates by many years the presentation of any complaint or any contention that such practice constitutes a violation of the agreement. The first complaint of the practice bears a date of September 5, 1939.

If, as contended by Employees; no one except a telegrapher should be permitted to use the telephone to obtain train lineups from other telegraphers at stations where a telegrapher is employed, we are of the opinion that such a requirement is not to be found in the Scope Rule of the agreement but may be found only in a specific agreement of the parties of the same type as that deemed necessary in this agreement relating to train orders, and found in Rule 2 of the agreement.

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 no violation of the existing agreement is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of January, 1941.