

Award No. 1535

Docket No. TE-1369

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

George E. Bushnell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that Agent-telegrapher P. L. Rogers, Fairbank, Rio Grande Division, be paid one call account engine watchman used to perform the duties of the agent-telegrapher on August 26th, 1937."

EMPLOYES' STATEMENT OF FACTS: "August 26th, 1937, Engine Watchman at Fairbank, Rio Grande Division, was instructed to call the train dispatcher on the telephone prior to the starting time of the Agent-telegrapher, for the purpose of securing a call on a train crew tied up at Fairbank. Call claimed by the Agent-telegrapher was paid and later deducted.

"An agreement is in effect between the parties to this dispute dated, as to rules and working conditions, September 1, 1927, and as to rates of pay, May 1st, 1927, revised July 1st, 1930, and August 1st, 1937."

POSITION OF EMPLOYES: "Rules 1, 2 and 16 are applicable to this dispute and are quoted herein for ready reference:

'RULE 1.

'Scope

"This schedule will govern the employment and compensation of the following: Agents, assistant agents and ticket agents incorporated in wage schedule, agent-telegraphers, agent-telephoners, agents, small non-telegraph; block operators, car distributors (if required to telegraph in the performance of their duties), drawbridge tenders (levermen), managers, punchers, staffmen, telegraphers, telephone operators (except switchboard operators), towermen, tower and train directors and wire chiefs, and will supersede all previous schedules, agreements and rulings thereon. In application of these rules, employes covered thereby will be considered as telegraphers.'

'RULE 2.

'Classification of Employes, New Positions, etc.

'(a) Where existing pay-roll classification does not conform to Rule 1, employes performing service in the classes specified therein shall be classified in accordance therewith.

'(b) When new positions are created, compensation will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district.

tion with matters under their jurisdiction, is also no different from the recognized practice in effect on this and other railroads.

* * * *

'As shown by the record in this case, there is no rule in the Telegraphers' Agreement restricting the right of the Carrier to have employes other than those covered by that Agreement handle messages and reports over the telephone; nor any rule prohibiting telephone conversations by and between officers, dispatchers, assistant yardmasters, and/or other employes; nor prohibition of train and yard men obtaining permission from a telegrapher by telephone to use a designated track, or report when clear of same. See Awards 652 and 653.'

which is equally applicable here.

CONCLUSION

"In the absence of any rule in the Agreement which would sustain the claim which is entirely without merit, the Carrier requests that the claim of the Petitioner be denied."

OPINION OF BOARD: Agent-telegrapher, P. L. Rogers at Fairbank claims pay for one call on August 26, 1937.

Before Rogers quit work on the 25th, the train Dispatcher at El Paso directed him to notify the engine watchman to call the dispatcher's office at 7:00 A. M. the next day, one hour before Rogers' regular starting time, for the purpose of handling a call for a branch train and engine crew which was tied up a Fairbank over the night.

Ordinarily, the engine watchman would have called the crew at the regular time without any instructions from the dispatcher. In this instance, however, the dispatcher had information which indicated that the branch train might be delayed in its departure the next morning because of the possible delayed arrival of three cars of horses for Sonoita on Extra West.

Claimants, relying on Rules 1, 2, and 16 of the agreement, say that a definite time having been set for the transmission of this information the carrier should have notified the agent-telegrapher to come on duty at 7 A. M. in order to handle this message.

The carrier says that the scope rule of the agreement "neither by express language nor by implication conveys to employes of the telegrapher class the exclusive right to use the telephone, for purposes such as here involved which have to do with an employe's performance of his particular duties and responsibilities nor does it convey to telegraphers such a right in the use of the telephone for the performance of the general business of the Railroad."

It insists that since under Rule 31 (c) telegraphers are not "required regularly to call crews at any station" this transaction was one not normally performed by the agent-telegrapher and was solely one of the duties of the engine watchman concerned.

It argues that no such restriction as claimed by the employes should be arbitrarily imposed.

The employes reply that the claim is not based on Rule 31 (c) but upon the handling of instructions by telephone which if communicated during regular working hours would have been handled by the agent-telegrapher and that, this work being covered by the scope of the agreement, it cannot be delegated to an employe not covered by the agreement.

The applicable awards of this Division are in conflict.

That the action of the carrier in the instant case was a violation of Rules 1, 2, and 16 of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1941.

Dissent to Award 1535, Docket TE-1369

The Opinion after distinguishing between prior awards of the Division relating to the use of telephones, proceeds to associate the instant claim with Award 604 upon the premise of inability "to find any distinction in the controlling facts" and with the enumerated succeeding awards as associated with Award 604 to the extent of "constituting the weight of authority of the awards of this Board." Thus the award fails to distinguish the singularly exceptional act of an engine watchman in securing the time for a crew call from the train dispatcher by telephone from these other cases of widely differing circumstances, amount and character of work involved and, as well, fails to take cognizance of the distinctive conclusion of Award 604, here particularly associated with the present case, that the facts there presented stamped the arrangement as evasion of the overtime and call rules of the agreement.

We perforce dissent to the instant award which illogically finds in favor of the claimant by further extending the scope rule of the telegraphers' agreement by reliance upon prior erroneous awards which gave expanded meaning and purpose to the scope of the telegrapher agreements there involved.

/S/ C. C. Cook
/S/ R. H. Allison
/S/ A. H. Jones
/S/ C. P. Dugan
/S/ R. F. Ray