

Award No. 1553

Docket No. TE-1386

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

E. L. McHaney, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY AND PEORIA & EASTERN RAILWAY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Cleveland, Cincinnati, Chicago & St. Louis Railway, that the practice of requiring and permitting section foremen, operators of motor cars and other employees not under the Telegraphers' Agreement to regularly receive by the use of the telephone, line-ups or positions of trains to govern the movement of motor cars or other mobile equipment, is in violation of the Telegraphers' Agreement and shall be discontinued; and that effective August 1, 1938, telegraphers who were available to have performed this work shall be paid for a call on each instance on each day on which line-ups or positions of trains have been received in this manner by such section foremen, operators of motor cars or other employees until the violative practice shall be discontinued."

EMPLOYEES' STATEMENT OF FACTS: "An agreement bearing date April 1, 1938, as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

"Over a period of years it had been the practice of the carrier to occasionally require and/or permit section foremen, operators of motor cars and other employees not under the Telegraphers' Agreement to copy, by the use of the telephone, a line-up or position of trains governing the movement of their motor cars or other mobile equipment. Within the past four or five years this practice has grown into a regular daily requirement, except on Sundays, and particularly on the Peoria and Eastern Railway, which is operated under contract by the Cleveland, Cincinnati, Chicago and St. Louis Railway.

"On August 1, 1938, the representatives of The Order of Railroad Telegraphers, party to said agreement, served notice upon the carrier in conference that the practice of the carrier of requiring and permitting section foremen, operators of motor cars and other employees not under the Telegraphers' Agreement to regularly copy line-ups governing the movement of their motor cars or other mobile equipment, by the use of the telephone, constituted a violation of said agreement and that such violative practice should cease immediately.

"The result of this notice had the effect of but slightly abating the violative practice after April 24, 1940."

'No employes other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator 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.'

"The employes have not cited specific rules in support of their contention; beyond general statements that all such work is within the 'scope' of their agreement.

"The Third Division has recognized that such a scope rule in itself does not set up restrictions against the use of the company telephones by all others.

"In Award 1145 (C. & O. Ry.) the Carrier had exactly the same situation. Motor car line-ups were being obtained from telegraph operators at other stations, the line-up being given by the dispatcher to the telegrapher, and the latter gave it by telephone to the motor car operator.

"Rule 58 on the C. & O. is exactly the same as Big Four Rule 19, previously quoted herein.

"The Division pointed out that Rule 58 (19 in our schedule) was a restrictive rule and there could be no proper presumption that the general terms of the scope rule were intended to be more restrictive than the specific rules of the agreement.

"As in the case of the C. & O. our motor car operators are getting their line-up from telegraph operators, and the supposed claim offers no specific citation of any contrary instance.

"There has been no contention locally that the complaint has reference to getting supplemental information later in the day from points out between stations or offices, where telegraphers are not and were never employed. At such places they deal with adjoining telegraphers where the facilities permit and this is the usual condition.

"In arranging matters in April, 1940, so that the motor car operators would deal with telegraphers, the Carrier (without prejudice to any contrary views) felt that it had made its practices conform to the decisions reached by the Third Division in other cases generally. At that time, the Division had rendered Awards 603, 604, 645, 919 and 941. As mentioned herein, we now have the further benefit of Award 1145, dated July 19, 1940, in the C. & O. case, and the Carrier feels that it has taken all reasonable measures to handle this situation in a manner consistent with the views expressed by the Third Division."

OPINION OF BOARD: This complaint of the Order of Railroad Telegraphers against the Carrier is based on the alleged "practice of requiring and permitting section foremen, operators of motor cars and other employes not under the Telegraphers' Agreement to regularly receive, by the use of the telephone, line-ups or positions of trains to govern the movement of motor cars or other mobile equipment," which, it is said, is in violation of said Agreement; and a claim is made, beginning with August 1, 1938, for telegraphers who are not named, but who were available, "for a call on each instance on each day on which line-ups . . . have been received in this manner by such section foremen . . . until the violative practice shall be discontinued."

The General Chairman of the Organization served notice orally, in conference, on the Carrier on August 1, 1938, that the practice of requiring and permitting section foremen, operators of motor cars, and other employes not under the Agreement to secure line-ups by use of telephone constituted a

violation of the Agreement and should cease. Thereafter, certain correspondence between the General Chairman and the Carrier was had, beginning with the letter of the General Chairman of December 6, 1939. On April 18, 1940, the Vice President and General Manager of the Carrier wrote the General Chairman in part as follows: "Without conceding the basic propriety of this protest, we have taken steps to reduce or eliminate such direct handling with the dispatcher as cited in your letter of December 6. This is merely in line with what we indicated verbally on April 4 might be done without commitment in principle on either side." The steps taken consisted in instructions issued "to dispatchers and maintenance of way employees to the effect that dispatchers should not transmit line-ups direct to such employees by telephone and that such employees should not receive line-ups direct from dispatchers by telephone, but where line-ups could not be secured from telegraphers by personal handling, they were at liberty and should secure them through telegraphers by telephone from any other point if a telegrapher was not available at the time needed." It is admitted by the Employees that this order "disposed of numerous instances where line-ups were being transmitted by dispatchers direct by telephone to employees not under the Telegraphers' Agreement."

That such practice of dispatchers transmitting by telephone line-ups direct to those employees not covered by the Agreement is in violation thereof is established by numerous decisions of this Division, beginning with Award 604. Among others see Awards 919, 941, 1024, 1220, 1224, 1261, 1268, 1281, 1282, 1283, 1284, 1303, and 1535.

It is also well settled, in the opinion of this Referee, that not all telephone communication is subject to the Telegraphers' Agreement. It was so held in Award 603, and we do not understand it to be so contended here. In that Award Referee Swacker said, "It is well known that section foremen and other maintenance employees occasionally use box telephones located at blind sidings and other outlying locations where no operator is available for the purpose of communicating either with operators or their supervisors and this practice is not regarded as an encroachment on the Telegraphers' Agreement." See also Awards 645, 1145, 1277, 1305, and 1320. In the last mentioned case, decided in January 1941, it was said:

"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."

We, therefore, hold that it is not a violation of the Telegraphers' Agreement for a section foreman or operator of a motor car to secure line-ups from a telegraph operator by use of the telephone, nor is it a violation thereof for him to copy such line-up so received for his use out on the line, even though the line-up form provides space for certain information. This is for the use of the Carrier and the form is not required by any rule of the Agreement. The operator is required to copy the line-ups on the form, "One copy to be delivered to the person in charge of motor car and one copy kept on file."

The Employees state that the method used by the Carrier "to reduce or eliminate such direct handling with the dispatcher," as referred to in its letter of April 18, 1940, was the changing of their starting time at several of the offices in the complaint to an earlier hour, so he would be on duty when line-ups were issued by the dispatcher, but that there are other points "at which section foremen are regularly being required to copy line-ups daily from the dispatcher through the medium of an intervening telegraph office." For instance, at Pittsboro, Indiana, employees say that the section foreman, both before and after the station ceased to be a telegraph station, copied his own line-up direct from the dispatcher, and, while the Management apparently tried to correct this situation in April 1940, the situation still exists; that, under the change made in April 1940, he was supposed to get his line-ups from the Agent at Brownsburg, some 5 miles to the east, but when that Agent calls him and offers him the line-up, he tells the Agent, "O.K., I have it"; and that the only way he could get it was from the dispatcher. It is said that the foremen are doing this by "listening in" when the dispatcher sends out his line-ups each morning.

It is the opinion of this Referee that this is an attempted evasion of the rights of the telegraphers, and, if done with the knowledge or consent of the Management, or with its permission or by its connivance, it constitutes a violation of the Telegraphers' Agreement.

We are unable to determine whether the Carrier is a party to this practice from this record, or whether the maintenance men do it for their own convenience, so the claim is denied.

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 Carrier has not been shown to be guilty of violating the rule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of August, 1941.

Special Concurrence
to
Award No. 1553, Docket No. TE-1386

While we concur with denial of this claim, we are not in agreement with that part of the "Opinion" holding it to be a violation of the agreement for a dispatcher to transmit by telephone line-up of trains direct to employees not covered by the telegraphers' agreement.

The dissent to Award No. 1552, Docket No. TE-1385, indicates our position on that question and is applicable hereto.

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