

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Carl B. Stiger, 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

(a) that 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 Wells, Kansas; Webber, Kansas; Oak Hill, Kansas and Stratford, Texas, listed as small non-telegraph agencies, is in violation of the Telegraphers' Agreement and shall be discontinued;

(b) that the existence and use of telephones at Wells, Kansas; Webber, Kansas; Oak Hill, Kansas and Stratford, Texas for communication purposes classifies those positions as agent-telegrapher positions and entitles the incumbents to retroactive reimbursement as such since their improper classification as small non-telegraph agents; and,

(c) employes 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 agents' assigned hours.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of December 1, 1938 is in effect between the parties to this dispute, copies of which are on file with the National Railroad Adjustment Board.

The current Telegraphers' Agreement, effective date December 1, 1938, which contains agreed-to rules, rates of pay, classifications, etc., pages 33, 34 and 42, among other positions, lists the following:

Oak Hill	Agent—S. N. T.	.56 per hour
Webber	" "	.56 per hour
Wells	" "	.56 per hour
Stratford	" "	\$90.20 per month

The dispatcher's telephone in each instance has been removed from the depot to, or installed at, a location adjacent thereto.

Section foremen are required and/or permitted to regularly make use of said telephone facilities in securing train line-ups or positions of trains during and/or outside of the agents' assigned hours.

All this despite the fact that the Organization, being fully aware of the existence of the practice complained of has previously offered no protest until the instant dispute arose. The complete absence of a protest from the Organization is evidence of their long recognition of the right of section foremen and other motor car operators to secure train line-ups in connection with the performance of their work, through the use of booth telephones, without any violation of the Telegraphers' Schedule. That which the Organization seeks would require the Carrier to either reestablish offices of communication and assign telegraph and/or telephone employees at each of the respective stations in order that they might perform a few minutes work on the days it was necessary to secure a line-up for the section foreman or other motor car operators, or force the Carrier to require its section foremen and other motor car operators to perform their work without protection of a train line-up. The assignment of operators when there could not possibly exist more than a few minutes work per day is not only uneconomical but highly unreasonable. The necessity for section foremen and other motor car operators receiving the benefit of train line-ups in connection with their work needs no comment from the standpoint of safety.

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

Carrier submits that it has shown that there is no valid reason for a claim or cause for complaint in this dispute, but if there were, any claim for reparation retroactive to a date extending more than thirty (30) days back of the date of the claim is outlawed by the provisions of Section (i), Article V, of the Telegraphers' Schedule, quoted and applied to the facts of the case in the "Carrier's Statement of Facts."

OPINION OF BOARD: The scope rule of the agreement effective December 1, 1938 governs the employment and compensation of agent-telegraphers, agent-telephoners, telegraphers, telephone operators (except switchboard operators), and others.

When the stations were telegraph offices the line-ups were secured from the telegraphers. When the positions were reclassified as small non-telegraph the telephones were removed from the depots or station buildings and located in booths adjacent thereto and since that time the Carrier has required or permitted section foremen to obtain line-ups direct from the dispatcher over the booth telephones.

This work of receiving line-ups belonged to the position of telegrapher at the time of the reclassification. Although classified as small non-telegraph, the stations, because of this practice complained of by the Employees, were in fact agent telegrapher agencies and the transfer of this work covered by the scope rule to section foremen violated the agreement. Substantially identical claims of the Organization against this Carrier were sustained by Awards 1261, 1284, and 1303. For other awards sustaining this opinion see 604, 851, 919, 941, 1024, 1220, 1224, 1261, 1268, 1281, 1282, 1283, 1284, 1535, 1552, 1553, 1671, and 1720.

The Board has given full consideration to Awards 42, 255, 890, 1078, 1257, 1396, and 1397 cited in behalf of the Carrier and finds no difficulty in concluding that they are not in conflict with the result reached in this award.

The absence of a protest against this practice from the Organization for a period of 8 years is not sufficient to establish consent to the illegal practice by the Employees or a modification of the scope rule by acquiescence. See Awards 1720, 1671, 1282, 941, 919, 735, 604, and 571 in which substantially the same defenses were interposed as are made in the instant dispute and in each of said awards the claim of the Organization was sustained.

The claims with reference to Wells, Webber and Oak Hill, Kansas were first presented to the Carrier on September 7, 1940, and the claim as to Stratford, Texas was first presented to the Carrier on January 14, 1940.

Under the provisions of Article V (i) reparations will be limited from a period beginning 30 days prior to the dates the several claims were presented to the Carrier.

No claim for a call is sustained where the section foremen secured line-ups at a time when the agents were on duty.

Nor is a claim for a call sustained where a foreman secured line-ups through a telegraph operator. See Awards 1145, 1305, and 1320.

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 employes involved in this dispute are respectively carrier and employes 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 the record shows a violation of the scope rule.

AWARD

Claim sustained to the extent shown in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1942.

DISSENT TO AWARD NO. 1752, DOCKET TE-1612

Dissent is recorded to the Award in this case for the reasons more particularly set forth in Dissents to Awards 1261, 1284, and 1303, in similar disputes between the same parties, and also for reasons as generally expressed in Dissents to Awards 1720, 1671, 1552, and other Awards which infringed upon the right of section foremen to continue to use the telephone as they were justified by long continued custom to do as a required part of their duties without violation of any contract covering employes of other classes.

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