

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, 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 the senior extra telegrapher on the Tucson Division not working be compensated for one day's pay, November 25th, 26th and 27th, 1940, account conductor copying train orders and line-ups for pile driver at Nunez, Tucson Division.

EMPLOYEES' STATEMENT OF FACTS: On November 25th, 26th, and 27th, 1940, an employe not covered by the Telegraphers' Agreement was used to handle train orders and line-ups for a pile driver that was working between Bon and Nunez, Tucson Division. Under the Rules of the Telegraphers' agreement, a telegrapher should have been used to perform this work.

There is an agreement in effect between the parties to this dispute and copy of that agreement is on file with this Board.

POSITION OF EMPLOYEES: This claim is prosecuted under Rules 1 and 2 of the Telegraphers' Agreement, which we quote 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.

(c) Positions covered by this agreement will be filled by telegraphers taken from the telegraphers' official seniority lists.

In Award 700 the Board stated:

"As shown by the record in this case, there is no rule in the Telegraphers' Agreement restricting the right of the Carrier to have employees 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 employees; . . ."

Again in Award 1145, the Board, speaking through Referee Sharfman, stated:

"It is common knowledge, and not controverted by the employees, that not all telephone communication is subject to the Telegraphers' Agreement."

There is not now, nor has there ever been, a telegrapher employed at either Nunez, Arizona, or Bon, Arizona.

The taking of a train order or train orders by a conductor at a blind siding does not create a telegraph office or a telegrapher's position at that point.

No provision of the current agreement provides for payment to telegraphers in cases of this kind. The only provision in the current agreement providing for payment to telegraphers where train orders are handled by other than telegraphers is Rule 29 which is as follows:

"RULE 29

HANDLING TRAIN ORDERS

No employees 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 emergency, in which case the telegrapher will be paid for the call." (Emphasis ours.)

The Board's attention is directed to the underscored portion of the above rule. There was no telegraph or telephone office at Nunez or Bon, Arizona; it follows, therefore, that there was not an operator employed or available at either point.

The claim in this docket is for the payment of one day's pay November 25, 26 and 27, 1940 to "the senior extra telegrapher on the Tucson Division not working." There was no extra telegrapher on the Tucson Division available on these dates.

If the Board considers the situation per se, the unreasonableness of the petitioner's position is immediately evident. The carrier has no desire to deprive telegraphers of work that is rightfully theirs, and has not done so in the instant case; however, if the alleged claim is sustained it will create a condition that would be entirely impracticable and in fact establish and impose upon the carrier a new rule not agreed to by the carrier. That the Board has the authority to construe and enforce agreements but not to make them is a principle so well established that no citations in support of it are necessary.

CONCLUSION

The carrier asserts that, having conclusively established that the alleged claim in the instant case is entirely without basis or merit, it is incumbent upon the Board to deny it.

OPINION OF BOARD: On November 25, 26 and 27, 1940, the Carrier operated a work train out of a blind siding, called Nunez, at which no Telegrapher was or ever had been employed. There was, however, a telegraph office

at Casa Grande, 6.3 miles to the East, on the same line. During said period the conductor in charge used a telephone to obtain information from the Dispatcher's office as to the location of other trains and to receive and repeat train orders, which he also copied. The claim is that a Telegrapher should have been employed to perform this service and that the senior extra telegrapher on the Division who was not working at the time should be compensated for each of said three days.

We would not be justified in resolving this dispute upon the theory that the Carrier should have made Casa Grande, or any other point, headquarters for said train. The operation of a train involves so many intricacies that this Board should not undertake to substitute its judgment with respect to such a matter for that of the responsible Carrier. Nor do we consider the fact that no Telegrapher had ever been stationed at Nunez as of controlling importance. To so interpret the Agreement would render it static and preclude the extension of its coverage to all new stations.

The pertinent parts of the Agreement with which we are presently concerned are: Rule 1—"This schedule will govern the employment . . . of . . . telegraphers, (and) telephone operators (except switchboard operators) . . ." and Rule 2 (c)—"Positions covered by this agreement will be filled by telegraphers taken from the telegraphers' official seniority lists." These rules do not mean that all telegraph and telephone work, except switchboard operations, is covered by the Agreement. For example, merely incidental telegraphic and telephonic operations and those occasioned by emergencies or unforeseeable contingencies may not, under the particular facts, be regarded as within the scope of the Agreement. See Awards 603, 652, 653, 700 and 1145. The real test, it seems to us, is suggested by the words "employment" and "positions", found in the quoted portions of Rules 1 and 2 (c), respectively. When the activity is such as is ordinarily performed by Telegraphers while employed on Telegraphers' positions, it must be considered under the Agreement.

The facts of this case do not present a situation of chance calls or of a crew becoming "dead" at a blind siding because of a lack of orders. The record discloses that nightly headquarters was established for the work train at Nunez and that during the period involved, short as it was, the conductor received six train orders and three daily lineups, besides using the telephone several times each day to ascertain when certain trains might be expected to arrive. This, we are constrained to hold, characterizes the conductor's use of the telephone as Telegraphers' work. It may be noted, in passing, that since December 1, 1944, controversies of this character have been covered by a specific 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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier violated the Agreement as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 28th day of February, 1945.