

Award No. 3199

Docket No. TE-3267

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,

Joseph B. Fleming and Aaron Colnon, Trustees

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Chicago, Rock Island & Pacific Railway,

1. That the Carrier violates the terms of the telegraphers' agreement when, on at least, January 31, February 8, July 26, August 23, 1944, January 16, 25 and 30, and February 8, 1945, it permitted or required, and continues to permit or require, employes in the Memphis, Tennessee, Yard Office, who are not under the telegraphers' agreement to receive, copy and transmit messages, consists and/or other reports of record, by means of the telephone at times of the day when the regularly assigned telegraph-telephone operator, in the Memphis Yard Office, A. B. Scholl, is not on duty, and

2. That A. B. Scholl, hours 8:30 a.m. to 5:30 p.m., including the meal hour, shall be paid a call under the provisions of Article 4(c) of the telegraphers' agreement, on each of the above mentioned days and all subsequent days on which employes not under said agreement were improperly permitted or required to receive, copy and transmit messages, consists and/or other reports of record by means of the telephone during the time on such days she was not on duty and not called to perform this work that is hers in this one-shift telegraph-telephone office.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date January 1, 1928, as to rates of pay and working conditions is in effect between the parties to this dispute. The telegraph-telephone office in the Memphis, Tennessee, Yard Office is covered by said agreement, and is a one-shift office for the telegraph-telephone operator, with hours 8:30 a.m. to 5:30 p.m. including the meal hour, and the incumbent thereof is an employe under the agreement.

On at least January 31, February 8, July 26, August 23, 1944, January 16, 25, 30, February 8, 1945, and continuing regularly on subsequent dates, the Carrier, without recourse to the regular assigned telegrapher to the office under the provisions of Article 4(c) of the telegraphers' agreement, permitted or required, and continues to permit or require, employes not under said agreement to receive, copy and transmit messages, and other reports of record, by means of the telephone at times while the telegrapher was not on duty.

POSITION OF EMPLOYES: The following rules of the prevailing telegraphers' agreement are invoked in this dispute:

"SCOPE. The following rules and rates of pay will govern the employment of telegraphers, telephone operators (Except switchboard operators), printer operators, agents, agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators and staffmen employed upon the lines of these railways as shown in this schedule and are herein referred to as telegraphers.

"Article 3(b). Where existing payroll classification does not conform to the positions enumerated in the preamble of this agreement, employes performing service in the classes specified therein shall be classified in accordance therewith.

"Article 4(c). For continuous service after regular working hours, employes will be paid time and one-half on the actual minute basis. Employes shall not be required to work more than two (2) hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes.

"Employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for (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."

A one-shift telegraph-telephone office is maintained by the Carrier in the Memphis, Tennessee, Yard Office, and the incumbent employe is assigned to hours 8:30 a.m. to 5:30 p.m., daily, including the meal hour.

During the period when the telegraph-telephone operator was not on duty the following quoted messages, telegrams and/or reports of record, which represent a minute part, were received and copied in the Memphis Yard Office, at the time and on the days mentioned by employes not under the telegraphers' agreement, without any effort by the Carrier to require the telegraph-telephone operator to remain on duty after her regular working hours or notify or call her to perform work on her position:

"DS Little Rock, (Ark.), Jan. 31, 1944.
To C&E Local West,
4th St. Yard Memphis.

"Move outfit car 96504 from Heth to Forrest City without fail Monday.

/s/ L.M.T. 6:45 A.M.
(Chief Dispatcher)"

— — — — —
"DS Little Rock, (Ark), Feb. 8, 1944
To All Concerned.

"Run 1767 on extra west on crews rest. Hold 2144 for yard service.

/s/ L.M.T. 5:55 pm
(Chief Dispatcher)"

— — — — —
"Forrest City, (Ark.), July 26, 1944.
H.E.S. (Terminal Trainmaster)
Memphis

"Notify Sou. Kitchen car 492 pressure water valves not working unable to get water from faucets.

/s/ Roy O. Alexander 9:43 pm
"Main 31286
(Escort)

"Little Rock, 5:35P, Feb. 8, 1945

H.E.S.

Condr. Local in am.

Mfs.

Need 2 40-ft. 10 high augo and 2 small box Forrest City. See if can fill on local in am CD2

L.M.T. 543PM"

* * * * *

A telegrapher is assigned at Memphis Yard office 8:30 a.m. to 5:30 p.m. daily.

POSITION OF CARRIER: The above were ordinary telephone conversations similar to other conversations or instructions received over the telephone by clerical forces at Memphis Yard Office even while the operator was on duty and we can find no definite rule in the Telegraphers' Agreement to support claims as presented in this case.

In effect, the employes are contending that all telephone communication is subject to the Telegraphers' Agreement. The carrier on the other hand, holds the agreement was not so intended and does not so provide. As a matter of fact, since the telephone has been in use, this carrier, as well as other carriers, has made widespread use of telephone circuits as a means of communication, not only in connection with ordinary information and instructions such as involved in this case, but in connection with the general business of the railroad as well.

The telephone is used many times by clerical and other employes in connection with their work to receive or transmit information or instructions. This Board, likewise, in Award Nos. 603, 645, 652, 653, 700, 1983 and 2090 has held that not all conversations between railroad employes are subject to the Telegraphers' Agreement.

The claim has no merit and should be declined.

OPINION OF BOARD: Under the facts and circumstances of this particular case claim for a call should be substained on the following specific dates: February 8, July 26, August 23, 1944, January 16, 25, 30 and February 8, 1945.

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 claim for a call will be sustained to extent indicated in Opinion.

AWARD

Claim sustained to extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of May, 1946.