

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Bruce Blake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**NEW YORK CENTRAL RAILROAD COMPANY
(Line West of Buffalo)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on New York Central Railroad, Line West of Buffalo, that M. A. Briggs, the regularly assigned ticket agent-telegrapher at Conneaut, Ohio, shall be paid a call account of the Carrier, on April 5, 1945, sending the night yardmaster, an employe not under the Telegraphers' Agreement, from Ashtabula to Conneaut, a distance of thirteen miles, and there permitting and requiring him to perform telephone service direct with the train dispatcher in the handling of train movements in connection with the accident to the engine of Train No. 24, at about 2:30 a. m. on this day, instead of calling Telegrapher Briggs at Conneaut to perform this work that was contractually his under the terms of the Telegraphers' Agreement.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing date of February 1, 1943, as to rules of working conditions, and December 27, 1943, as to rates of pay is in effect between the parties to this dispute.

Conneaut, Ohio, is a two-shift office with hours from 8 a. m. to 4 p. m. on the first shift and from 4 p. m. to 12 midnight on the second shift. The regular incumbents of these two positions reside in Conneaut and can be promptly located, to perform emergency service outside of their regular assigned hours. M. A. Briggs the incumbent of the first trick position and claimant in this case has a telephone in his residence and has been called in an emergency direct from the Chief Train Dispatcher's office at Erie and also through the operators at OD Tower Ashtabula, Ohio. Two such occasions of record prior to the date of this claim, are June 21, 1943 and January 31, 1945.

At approximately 2:30 a. m., April 5, 1945, the engine on eastward passenger train No. 24 became disabled at State Line Curve a short distance east of Conneaut. The train dispatcher on duty when informed of this fact, arranged for a pusher engine to leave Ashtabula—13.24 miles west of Conneaut—to go east of Conneaut and meet train 24 where disabled and pull No. 24 back west of the cross-overs at Conneaut in order for a relief engine to couple in on the east or head end of the train. At the same time the train dispatcher instructed Mike Ferraro the night yardmaster at Ashtabula—not covered by the telegraphers agreement and not shown on the seniority roster of the telegraphers—to accompany the pusher engine from Ashtabula and to report to the train dispatcher at Erie on the train dispatchers' telephone circuit immediately upon his arrival at Conneaut, for the purpose of handling the train movements to and return where train 24 stood east of Conneaut and to keep the train dispatcher fully informed of each move and also to report all trains passing that point.

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

In Award No. 1396, *Telegraphers vs. L. & N. R. R.*, this Board, with Referee Stone, stated in part:

"The trainmen are not doing the work of the operator-levermen. What is happening is that, for yard movements, trainmen are getting their instructions directly by telephone instead of having their action controlled by operator-levermen. It is impossible to see, in the terms of the rules, any ground for insisting, as the employes do with commendable candor, that telephone operators should be stationed at the telephone instrument which is now placed approximately where North Block used to be.

"If they were there, what would they do? Instead of the trainmen talking directly to the yardmaster, he would give his message to a telephone operator, who would repeat it into the 'phone, get the reply and repeat that to the waiting trainmen. Under the facts of this case, such an unneeded and unessential operation is certainly not contemplated by anything in the rules . . ."

In Award No. 2817, *Telegraphers vs. Southern Pacific Company*, this Board with Curtis G. Shake as Referee stated:

"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 relevancy of the principle consistently regarded in the above-mentioned awards to the circumstances of the instant claim is readily apparent and fully supports the carrier's contention that the claim is unfounded and not supported by the rules.

CONCLUSION:

1. No rule of the agreement was violated and the employes can cite no rule in support of their claim.
2. The rules do not accord to Telegraphers' Agreement employees the exclusive use of the telephone under circumstances pertinent to the instant claim.
3. The handling of the emergency situation created by failure of engine 5428 east of Conneaut April 5, 1945 did not involve any Telegraphers' Agreement work. Night General Yard Master Ferraro as an official of the carrier merely directed movements necessary to restore normal operating conditions with a minimum of delay.
4. The claim is without merit and should be denied.

OPINION OF BOARD: As the essential facts are not in dispute it is unnecessary to restate them here. The question is whether Claimant Briggs is entitled to be paid for a call on account of the telephone communications

had between the Dispatcher and Ferraro, the Night General Yardmaster? Answer to the question is to be determined upon the facts in the light of Article 22 of the controlling Agreement, which provides:

"No employes others than covered by this agreement 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."

A two-trick office was maintained at Conneaut where Briggs was employed. Telephone communications were had from that point between the Dispatcher and Ferraro concerning the movement of the pusher engine, the movement of Train No. 24 from State Line Curve to the crossovers at Conneaut, the movement of the relief engine and the handling of the disabled engine. Ferraro advised the Dispatcher when Train No. 24 was ready to leave Conneaut. Further, he informed the Dispatcher of the passing of other trains through Conneaut.

That these communications between the Dispatcher and Ferraro constituted the handling of train orders in contemplation of Article 22 is not, to our minds, open to dispute.

It is quite true, as contended by the Carrier, that the communications between Ferraro and the Dispatcher were had in a situation of emergency. The rule, however, expressly provides that "the telegrapher will be paid for the call" when train orders are handled in an emergency by one not covered by the Agreement.

Claimant Briggs was available and could have been promptly located. Clearly, he is entitled to be paid for the call.

For analogous situations see: Awards Nos. 943, 1535, 2817, 3114.

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 parties waived oral hearings thereon;

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of January, 1947.