

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILWAY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Seaboard Air Line Railway, that T. O. Setzler, the regularly assigned agent-operator at Swansea, South Carolina, shall be paid for a call on April 5, 1946, under Rule 8 of the Telegraphers' Agreement, account of conductor of train No. 2 clearing the block at Swansea by the use of the telephone on this day, at a time when agent-operator Setzler was not on duty, to allow train No. 32 to pass his train.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of October 1, 1944, as to rules and working conditions is in effect between the parties to this dispute.

T. O. Setzler is regularly assigned agent-operator at Swansea, South Carolina, assigned hours from 8:00 A. M. to 5:00 P. M., one hour out for lunch. He was readily available for call on April 5th for the purpose of performing service of blocking trains, a duty he performs during his assigned hours, but was not called by the Carrier.

Setzler made claim for call on April 5th on account of conductor train No. 2 clearing block at 6:58 P. M., to let train No. 32 pass getting the block back at 7:27 P. M.

Exhibits "A", "B" and "C" are submitted and made a part of this submission. These exhibits reflect the handling of this claim up to the Superintendent. Case was appealed to the General Manager who upheld the position of the Superintendent.

POSITION OF EMPLOYEES: The following quoted rules of the Telegraphers' Agreement are invoked in this dispute:

"Rule—Scope:

"This agreement will govern the employment and compensation of agent-telegraphers, agent-telephoners, division car distributor-operators and report clerk-operators, telephone and telegraph operators (except switchboard operators), clerk-operators, morse-teletype operators, towermen-telegraphers, towermen-telephoners, levermen-operators, and also such station agents and ticket agents as are listed herein.

"Rule 8—Calls:

"When notified or called to work outside of established hours employees will be paid a minimum allowance of two hours at over-time rate."

Operator to assist him. Instead, he would have called the Operator at North, just as he did in this case. Concerning this particular point, you will note that Rule 339 would only permit the Conductor to get his clearance to proceed from the Operator to whom he reported clear. It is possible, however, that the Block could have been shortened if Operator Setzler had been on duty and No. 2 could have, under these conditions, been permitted to proceed to the next station and No. 32 could then have been permitted to enter the Block north of Swansea as soon as No. 2 reported clear at Gaston. Only under these conditions would the Operator at Swansea have had any part in the operation.

We also call to your attention the opinion as rendered in Award 1145. The Referee stated: "It is common knowledge and not controverted by the employes that not all telephone communication is subject to the Telegraphers' Agreement. In the instant proceeding the information was obtained by the motor car operators for their own use from Telegraph Operators employed under the prevailing schedule of rules."

As repeatedly stated, our Conductor conversed only with a Telegrapher.

We have called to your attention the portion of the opinion just quoted because the representative of the organization, in discussing this claim, stated that all communication service which involved matters of record belong exclusively to Telegraphers. Our Agreement does not so provide and throughout the years we have not been guided by such a principle; in fact, we daily require and have for years required numerous employes to use the telephone in transacting company business and if the contention of the organization is correct then in every office where we have a telephone we would have to have a Telegraph Operator. In order for such a contention as that of the organization to be supported it would have to be spelled out in the Agreement between the parties in clear and concise language. The Agreement between the parties to this dispute does not even so much as imply that the work of releasing and clearing the Block belongs exclusively to employes covered by the Telegraphers' Agreement.

Our position is that we have not violated the Telegraphers' Agreement and that if we had the organization would now be estopped from making a claim as result thereof because for 32 years they acquiesced in the practice of which they now complain.

For these reasons the Carrier respectfully requests that the claim be declined.

OPINION OF BOARD: Claimant is an agent-operator at Swansea, a position listed in the agreement, with assigned hours 8:00 A. M. to 5:00 P. M. The question presented is whether it is a violation of the scope rule for a conductor at Swansea to use the telephone to release and secure a block from the operator at an open station while the agent-operator at Swansea was not on duty. The communication was not with the dispatcher nor is there any question of handling train orders. Operating Rule 339 of this carrier has been in effect thirty-two years, and by its terms the conductor was required to release and secure the block in the manner in which he acted in this instance. While this operating rule has been in effect four new agreements have been negotiated between the Order of Railroad Telegraphers and this carrier. Neither during these negotiations nor at any time until the present has operating Rule 339 or the long established practice thereunder been questioned by the organization. This Board has held on numerous occasions that not all telephone communication is subject to the Telegraphers' Agreement. See Award 1145. It is stated in Award 2436, "The conduct of the parties to a contract is often just as expressive of intention as the written word and where uncertainty exists, the mutual interpretation given it by the parties as evidenced by their actions with reference thereto, offers a safe-guide in determining what the parties themselves had in mind when the contract was made." True past violations of an agreement do not revise the agreement. But this rule has no application unless the agreement is susceptible to only one meaning, and is clear and explicit. The rule announced in

Award 1397 is applicable here, "The long delay in asserting this claim does not bar the employees from complaining of a violation of the contract by continuing course of conduct or otherwise. But, under the controlling and distinguishing facts of the case, such delay is cogent evidence that there has been no violation." And as said in Award 1145, "Although it must be conceded that the long-continued acquiescence of employees cannot operate to alter the scope rule of the agreement, such acquiescence is clearly relevant to a determination of the intent of the parties as to the applicability of the scope rule to the situation here in dispute." See also Awards 1435 and 2090.

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 no violation of the agreement is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1947.