

Award No. 4265

Docket No. TE-4229

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**CHICAGO, INDIANAPOLIS & LOUISVILLE
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Indianapolis and Louisville Railway Company, that the agent-telegrapher at Delphi, Indiana, be paid for a call on December 12 and 13, 1947, and for a call on each day since, when the Carrier required or permitted a signal maintainer, an employe not under the Telegraphers' Agreement, to secure line ups at Delphi from the telegrapher at Monon, Indiana, by means of the telephone before the agent-telegrapher at Delphi went on duty.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of July 1, 1929, is in effect between the parties to this dispute.

In the wage scale, at page 20 of this agreement, the following positions are listed:

"Delphi.....Agent
Delphi.....1st trick Telegrapher
Delphi.....2nd trick Telegrapher
Delphi.....3rd trick Telegrapher"

All three positions of telegrapher have since been abolished, and the position of Agent has been reclassified to that of Agent-Telegrapher. The assigned hours of the Agent-Telegrapher at Delphi are 8:00 A. M. to 5:00 P. M., with one hour for lunch, daily except Sundays and holidays. Also regularly assigned, are two calls each Sunday and holiday, and one call after 5:00 P. M. each week day. The rate of pay is \$1.38 per hour.

The station at Delphi, Indiana, is located on the Indianapolis Line at a distance of 22.6 miles from Monon, Indiana, a point on the Main Line of the Carrier where the Indianapolis Line and the Michigan City Line diverge from the Main Line. Continuous train order and telegraph service is maintained at Monon.

The Carrier requires or permits the signal maintainer at Delphi, an employe not covered by the Telegraphers' Agreement, regularly to secure

during the course of the telephone conversation the officer or employe wrote down anything that could be construed by the Organization "as a matter of record". When he was asked how such matters should be handled and the organization consider it as not being a violation of the agreement, he advised that the officer or employe making the call should have a telegraph operator with him in his home. He further stated that officers and/or employes could not talk with each other from their homes and make the conversation or parts of the conversation a "matter of record" without violating the agreement.

THE CARRIER HOLDS:

1. The agreement was not violated.
2. The scope rule (1-A) and the call rule (7-C) have no bearing in the case.
3. Nothing in the agreement prevents a motor car operator from getting his line up over the telephone from an operator covered by the agreement.
4. Mr. Gorham did not perform work allocated to telegraph operators, therefore, Agent-Telegrapher at Delphi was not deprived of work belonging to him or telegraph operators.
5. The request of the employes is for a new rule.

(Exhibits not reproduced.)

OPINION OF BOARD: This Claim is predicated upon the fact that a signal-maintainer at Delphi, Indiana obtained line-ups from the telegrapher at Monon, Indiana by means of a commercial telephone. The Petitioner says that this constituted telegrapher's work, for which the agent-telegrapher at Delphi is entitled to be compensated for a call for each violation.

The Scope Rule of the effective Agreement of July 1, 1929 applies to "Telegraphers and Telephone operators (except switchboard operators)." and other designated groups of employes. The specific character of the various activities embraced by the Scope Rule are not otherwise described. The problem is complicated by the further fact that the telegraph has been supplanted by the telephone for many purposes in recent years, and that the telephone is likewise now utilized in many instances where no use of a telegraph was made in remote times. We further may observe that there are many incidental uses of the telephone by railroad employes that have never been regarded as belonging exclusively to telegraphers, even by the Organization that represents them. The Awards of this Board, in respect to the application of agreements substantially like the one now before us are not in complete harmony.

The Petitioner relies heavily upon the fact that the recipients of the line-up information made records thereof, and urges that this is the rational test to be applied in determining whether the particular activity was within the scope of the Agreement, citing Award No. 3114 and others. We have no fault to find with the conclusion reached in the above Award but we are not persuaded that the formula which the Petitioner would have us apply can be so generally and abstractly relied upon. It seems to us that the better approach would be to balance and weigh many factors in resolving a controversy of this character. Among the matters that might be entitled to consideration are the following: Whether the function for which the telephone was used was formerly performed by means of the telegraph; the

practices of the parties as these relate to whether the particular activities were regarded in the past as covered by the Agreement; whether the activity is closely related to the recognized duties of those in the telegraphers class; and whether or not the activity had any relationship to the movement of trains or other operational functions. The above are merely indicative of the elements which, in our judgment, should be considered, and they are not to be regarded as comprehensive or exclusive.

In the instant case the outstanding facts that persuade us to reject the Petitioner's Claim are these: The long period of time during which the Petitioner did not press upon the Carrier the Claim that obtaining line-ups was exclusively the work of telegraphers, and that these line-ups had no connection with train movements, but were sought and obtained by maintenance men in order to enable them to plan and carry on their work with the least possible interference by moving equipment. Giving to these factors the weight to which we feel they are entitled, we must conclude that for us to go further and hold that the activities here involved belonged exclusively to the telegraphers class would place us in the position of making a new contract to the parties. This can be accomplished properly in no other way than by negotiation. We refrain from trespassing into that field.

For the reasons stated, we cannot accept as of controlling importance the fact that a record of the train line-ups was made by those that received them.

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 the Carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of January, 1949.