

Award No. 4458

Docket No. TE-4501

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, 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 that the agent-telegrapher at Rensselaer, Indiana, be paid for a call on June 11, 1948, because at 6:23 P. M. on that date, the Carrier required or permitted Track Supervisor W. F. Smock, an employe not under the Telegraphers' Agreement, to perform the work of transmitting communications of record by telephone after the agent-telegrapher was off duty.

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

In the wage scale, at page 18 of this agreement, the following positions are listed:

"Rensselaer.....Agent
Rensselaer.....1st trick Telegrapher
Rensselaer.....2nd trick Telegrapher
Rensselaer.....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 Rensselaer are 8:00 A. M. to 5:00 P. M., with one hour for lunch, daily.

At 6:23 P. M., June 11, 1948, after the agent-telegrapher went off duty, Mr. W. F. Smock, who is a Track Supervisor, not an employe under the Telegraphers' Agreement, while at Rensselaer, communicated with the dispatcher at Lafayette, Indiana, reporting the arrival and release of the crew of Weed Burner 92. This information is necessary for the completion of the dispatcher's train sheet record. Shortly thereafter, at 7:09 P. M. on the same date, June 11, 1948, Mr. Smock transmitted by telephone direct to the dispatcher a three copy message of record, a copy of which is shown as Employees' Exhibit "A", attached hereto.

On June 14, 1948, claim for a call, in accordance with the terms of the Telegraphers' Agreement, was presented to the Carrier by the General Chairman in behalf of the agent-telegrapher at Rensselaer, which claim was handled up to and including the highest officer of the Carrier designated to handle such matters, but was declined.

Rule 6B in the agreement between the C. I. & L. Railway Company and the O. R. T. provides,

"Handling Train Orders. No employe except those covered by this schedule, will be permitted to handle train orders at places where telegraphers are located, except in an emergency."

The Board found in Award No. 1145 that rule 58 on the road in question was the only restrictive rule and it found that telegraphers do not have exclusive rights to the use of the telephone, therefore, in our agreement Rule 6B is found to be the only restrictive rule and such being the case it is clearly evident that the scope rule relied upon by the organization does not have any application in this case and it does not give to the telegraphers the exclusive right to handle all telephone communications.

Many awards of this Division hold that not all telephone work comes within the Telegraphers' Agreement. These Awards, as in Award No. 700, explicitly provide that officers and others are not prohibited from using the telephone and that the carrier is not restricted in its rights to have employees other than those covered by the Telegraphers' Agreement handle messages and reports over the telephone. Awards 603, 645, 652, 653, 700, 1145, 1320, 1396, 1553, 1983, 2090.

It has long been customary for officers, supervisors and other employees on this property to use the company telephone in contacting the chief dispatcher or dispatchers, or others to discuss the work they are performing, advise concerning their lay-up, where they can be located and such similar matters. If company telephone is not available then use is made of commercial telephone.

The Company holds that:

1. The scope rule has no bearing in the case.
2. 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, etc.
3. This is not a case of "evasion" of a rule.

(Exhibits not reproduced)

OPINION OF BOARD: The record shows that the only employe under the Telegraphers' Agreement at Rensselaer, Indiana, was the agent-telegrapher, assigned 8:00 A. M. to 5:00 P. M. At 6:23 P. M. on June 11, 1948, a track supervisor not under the Telegraphers' Agreement, reported to the dispatcher the arrival of Weed Burner 92 and the release of its crew for the night. The Organization contends that this is work belonging to the Telegraphers and asks that the agent-telegrapher be allowed a call. The act of the track supervisor in notifying the dispatcher that Weed Burner 92 had tied up for the night and was consequently in the clear of main-line traffic, enabled the dispatcher to remove restrictions on trains moving over the road previously occupied by the weed burner. Weed Burner 92 was operating as a train and its getting into the clear was as important to the dispatcher as a similar movement by any other train.

It is the rule, established by the decisions of this Board, that the use of the telephone in lieu of telegraph in communicating or receiving messages, orders, or reports of record, is work belonging exclusively to Telegraphers. Awards 1983, 3114, 4280. The work here involved was clearly a report of record as that term is used in the established rule. The track supervisor, not being under the Telegraphers' Agreement, had no right to the work. The agent-telegrapher was available and should have been called. An affirmative award is in order.

Carrier contends that the claim was not properly handled under Rule 4H in that the claim was not personally made by the aggrieved. The rule provides:

"All grievances which may exist shall be taken up with the proper official of the Company in writing within thirty (30) days by the aggrieved."

Assuming that Rule 4H has application to the present claim, the construction placed upon it by the Carrier cannot be sustained. This question was disposed of in Award 4456 and we adopt the reasoning of that award in support of the conclusion here reached.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1949.