

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Buffalo and East)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East, that:

Ticket Agent-telegrapher T. P. Goughan at Medina, New York, be paid a "call" for February 6, 1948, account a member of the train crew who is not covered by the Telegrapher's Agreement securing a line-up at Medina direct from the train dispatcher at 5:18 P.M., on this date by means of the telephone after the said Ticket Agent-Telegrapher T. P. Goughan had gone off duty.

EMPLOYEES' STATEMENT OF FACTS: An agreement hereinafter referred to as the Telegraphers' Agreement by and between the parties bearing effective date of January 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The working hours of Ticket Agent-telegrapher at Medina, New York, are 6:30 A.M. to 3:30 P.M., daily except Sunday with one hour out for lunch.

On February 6, 1948, at 5:18 P.M., the Conductor of the Medina switch engine at this station was required or permitted by the Carrier to copy a train line-up which reads:

"Westbound by Fancher at 5:09 P.M.

MC-7 2:45 out of Syracuse Jct.

No. 49 will be next west."

This line-up was sent from the train dispatcher in Rochester to the Conductor of the Medina Switcher who OK'd the order and advised the train dispatcher "we expect to get out early tonight."

The Organization for Ticket Agent-telegrapher T. P. Goughan, filed claim for a "call" payment under Rule 5, as the result of a violation of Rule 1. The Carrier denied the claim.

POSITION OF EMPLOYEES: The facts in this proceeding are simple, and, in view of the majority of previous decisions in somewhat similar instances, an award should be equally as simple. On the evening of February 6, 1948, the conductor of the switch engine at Medina, New York, at 5:18 P.M. within two hours after the ticket agent-telegrapher went off duty, contacted the train dis-

At other points, the situation was dealt with by rearranging the assigned hours of telegraphers, working them overtime or calling them out as the circumstances might require to conform with the provisions of Paragraph 1 of the understanding.

No change was made in existing practices with respect to "conversations between train dispatchers or operators and other employes regarding train line-ups or other instructions or information required in the performance of their duties or work" as the practice was covered by the supplemental understanding.

As evidence that the Telegraphers' Organization recognized the unsigned memorandum of understanding of February 5, 1941, as having force and effect just as though it had been signed, the Carrier will attach as its Exhibits 1 and 2 copies of General Chairman Woodman's letters of June 3, 1942 and March 30, 1946. While the alleged violations referred to in these letters are not before your Board, the Carrier desires to direct the Board's attention to Mr. Woodman's references to the unsigned memorandum of understanding in support of his contentions. In the first paragraph of the letter of June 3, 1942, claim is made for alleged direct violations of the scope rule of the Telegraphers' Agreement and the "unsigned memorandum". In the first paragraph of the letter of March 30, 1946, claims are made under Rules 1 and 22 of the Telegraphers' Agreement and the "Train Order Memorandum"; also, in the last paragraph, claim that Rules 1, 22 and the "Memorandum dated February 4, 1941" apply. (The correct date is February 5, 1941.)

3. RULE 5, RELIED UPON BY THE EMPLOYES IN PROGRESSING THEIR CLAIM IS NOT APPLICABLE IN THIS DISPUTE.

Rule 5, on which the claim is based, reads:

"Employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of two hours at time and one-half for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed thereafter on the minute basis."

This rule by its very language applies to employes who are notified or called to perform work, etc. Claimant employe was not notified to perform work nor called to perform work, and in fact performed no work outside of his regular working hours. Obviously, Rule 5 has no application in this case.

CONCLUSION: The Carrier has conclusively established that the practice complained of is in accord with the supplement to the unsigned memorandum of understanding of February 5, 1941 and not in violation of any of the rules of the Telegraphers' Agreement; therefore, the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are not in dispute. At Medina, New York, on February 6, 1948, a member of the train crew of a train known as a "traveling switcher" from Lockport to Medina received a line-up directly from the train dispatcher after the agent-telegrapher at Medina had gone off duty. On February 8, 1948, the Local Chairman presented claim on behalf of the agent-telegrapher for a call under Rule 5 of the Agreement of January 1, 1940.

The question before the Board is whether the copying of line-ups of train movements by telephone, by an employe not under the Telegraphers' Agreement, is in violation of said Agreement. Award 4516 goes into great detail on this question, and we agree with the Opinion of the Board wherein it is held that a line-up of train movements is a matter of record, and that the sending and receiving of train line-ups is work reserved to telegraphers under the Scope Rule of the Agreement of January 1, 1940.

Much has been said in regard to an unsigned Memorandum of Agreement between the parties of February 5, 1941, which the Carrier holds has precedence

over the Scope Rule of the Agreement of January 1, 1940. This same unsigned Memorandum of Agreement was considered in Award No. 4281 and ruled as not binding on either party. We agree with that award.

The Carrier contends that the train crew employe, the conductor in this instance, merely had a conversation with the dispatcher in regard to his work and did not copy a train line-up or any matter of record. It is an agreed fact that the conductor did receive over the telephone a line-up of train movements on his run, and that there was an agent-telegrapher available on call to have received said line-up. The question of whether the conductor then copied the information received over the phone on a piece of paper is of little interest in this case since the violation of the Agreement came when the conductor received the information over the telephone.

The Carrier has furnished the Board with a number of awards which holds that not all telephone work comes within the Scope Rule of the Telegraphers' Agreement, but we cannot agree that said awards are applicable to the agreed facts in this case. Here, the conductor of a train received a line-up by telephone from the dispatcher. Award No. 4516 on page 4, and referring to line-ups, said: "We think they are transportation communications in the sense that they protect a necessary branch of the service from the dangers of another. They are clearly matters of record." (Emphasis ours.)

As in the above case, there was an agent-telegrapher stationed at Medina, and the conductor could have received the line-up from that agent-telegrapher if he had been on duty. The fact that the agent-telegrapher was not on duty does not authorize the conductor to call the dispatcher for the line-up. The claim will be sustained.

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 Employe involved in this dispute are respectively carrier and employe 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 15th day of November, 1949