

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis Southwestern Railway Company; that

(a) the Carrier violated the scope and other rules of the prevailing Telegraphers' Agreement when, commencing January 13, 1948, and on each subsequent workday until and including June 18, 1948, it required or permitted a B & B foreman and/or section foreman at Kingsland, Arkansas, a one-man, agent-telegrapher station, to receive by telephone and copy lineups on the movement of trains each morning prior to the assigned starting time of the agent-telegrapher at Kingsland; and that

(b) the agent-telegrapher at Kingsland is entitled to and shall be paid a "call" on each of these days on which lineups were thus received by telephone and copied by these foremen at Kingsland at a time when the agent-telegrapher at Kingsland was not on duty but subject to call pursuant to Article 6-4 of the Telegraphers' Agreement.

EMPLOYES' STATEMENT OF FACTS: There is an agreement as to rules of working conditions and rates of pay, bearing date of December 1, 1934, hereinafter referred to as the "Telegraphers' Agreement", in effect between the parties to this dispute, copies of which are on file with the Board.

The position of agent-telegrapher at Kingsland, a one-man station, assigned hours 8:00 A.M. to 5:00 P.M. with one hour off for meals, is covered by the Telegraphers' Agreement and listed in the wage scale at page 19 thereof.

Commencing January 13, 1948, and continuing on each workday thereafter until and including June 18, 1948, the Carrier required and/or permitted a B&B foreman and/or section foreman at Kingsland to receive by telephone and copy train lineups prior to the assigned starting time of the agent-telegrapher at Kingsland.

Claim was filed by the Organization on behalf of the agent-telegrapher at Kingsland for a "call" on each of the days on which these foremen performed this telephonic communications service of record prior to the assigned starting time of the agent-telegrapher at Kingsland. Carrier declined payment of the claim.

POSITION OF EMPLOYES: In support of their claim that the Carrier violated the terms of the Telegraphers' Agreement when it required the B&B

Award 4265: Claim of agent-telegrapher for call because of signal maintainer securing line-up by commercial telephone from an adjacent station prior to time the agent-telegrapher came on duty. Claim was denied, Opinion of Board including the following:

"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."

Thus the Carrier respectfully submits there is no settled rule that line-ups must be issued through telegrapher at a particular point where foreman is located, even when there is no agreement involved other than a general scope rule. Here the parties to the schedule agreement went into the matter of line-ups and undertook to set forth the limits of the scope in that respect; and there is hence conclusive evidence in this case, in addition to the reasons in cases cited above, that there is no violation of the Telegraphers' Agreement for foremen to secure line-ups by telephone through telegraphers.

Under the circumstances it is plain that the claim is not supported by the rules, and Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are set forth in the foregoing statements of the parties and are not in dispute. The claim based on these facts and the Telegraphers' Agreement with the Carrier raises the issue of whether a B & B foreman and a section foreman, employees not covered by the Agreement, may receive train line-ups by commercial phone at a station where a telegrapher is assigned but not on duty from a telegrapher at the nearest open station.

The Scope Rule of the Telegraphers' Agreement, Article 1-1, does not purport to describe the work encompassed by it. To determine what the parties intended reference must be made to the traditions, customs and practices of the craft. Historically, it has been the performance of communication service essential to operation of the railroad (Award 4516). The second section of the Scope Rule on this property gives the exclusive right to telegraphers and dispatchers to handle train orders. We are unable to agree with the Carrier that the enumeration of this particular work as exclusive to the craft and train dispatchers made it the only work reserved under the Agreement to employees enumerated in the Agreement.

The specific work involved here was the receipt and copying of a train line-up. Train line-ups are reports of the movement of trains and as such affect the movements of motor cars, inspection cars and similar vehicles, as well as the activities of bridge gangs, as in the instant case. They are usually matters of record for the Carrier and are kept on file at the point of receipt when received by an operator (Award 3671). Thus, they are communications of record the transmission of which, by custom and practice, has come to be considered within the Scope covered by the Telegraphers' Agreement. See Award 4516. The Organization asserts that train line-ups are reports of record on this property, and this does not appear to be controverted.

Article 28-7 of the Agreement established a position of agent-telegrapher at Kingsland. Article 6-4 of the Agreement provides for the rate of compensation when called on duty outside of the regular assigned hours. These provisions with Article I contemplate that the agent-telegrapher at Kingsland will perform the work of telegrapher required at that station.

The Carrier contends that an agreement was made by the parties as expressed in Carrier's letter of June 25, 1947, that authorized the foreman to telephone, on other than the dispatcher's line, to an operator for train line-ups. The Organization denies that there was an agreement; but whether such agreement exists is not determinative of this claim. Assuming such agreement was made, it is apparent that it related primarily to terminating the practice of section foreman obtaining train line-ups direct from dispatchers, and it provided that such line-ups would be obtained "through telegraphers." There is nothing in the letter that authorizes a section foreman to obtain a train line-up by telephoning from a station, or vicinity, where an agent-telegrapher is regularly assigned but not on duty, to a station where a telegraph operator is on duty. As Referee Carter said in Award 4516, " * * * if the telegrapher is not on duty, such fact does not authorize one not under the Agreement to perform the work traditionally belonging to the telegrapher." We do not believe the letter, by restricting the use of the company line, authorized a section foreman to use a commercial telephone to obtain a train line-up when the call was made from a station where a telegrapher was assigned and not on duty, but available. It is the character of work involved and not the means of transmitting the messages that is important. See Awards 849, 4506.

Therefore, based on the facts of record in this case, we must conclude that the Carrier violated the Agreement when it authorized the foremen to obtain train line-ups at Kingsland by telephone from an operator at another station.

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 Carrier violated the Agreement.

AWARD

Claim (a) sustained.

Claim (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1950.