

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pittsburgh and West Virginia Railway that:

E. H. Lung, agent-operator, Bridgeville, Pa., be paid under Article 3 (c) of the Agreement effective November 1st, 1936, on the dates named as follows:

November 22, 1946, two hours thirty-seven minutes at the over-time rate.

November 23, 1946, two calls

November 24, 1946, one call

November 26, 1946, two hours, twenty-one minutes at the over-time rate plus one call.

November 27, 1946, one call

November 28, 1946, one call

December 1, 1946, one call

December 3, 1946, two class plus two hours forty minutes at the overtime rate

December 4, 1946, two calls

December 5, 1946, two calls

December 6, 1946, one call

December 7, 1946, one call

December 10, 1946, two hours twenty-nine minutes at the overtime rate

December 11, 1946, two calls.

EMPLOYEES' STATEMENT OF FACTS: An Agreement bearing date of November 1, 1936, as to rates of pay and rules of working conditions, is in effect between the parties to this dispute.

At page 11 of said agreement is listed the position of Agent-Telegrapher, Bridgeville, Pa., at rate of \$165.00 per month, subsequently converted to an hourly rate and progressively increased to \$1.798 cents per hour. Hence, the position is covered by the agreement and is entitled to all the protection and benefits accruing thereunder.

The claimant, E. H. Lung, is the regularly assigned Agent-Telegrapher at Bridgeville, with hours 8:00 a.m. to 5:00 p.m., one hour out for lunch. It is a seven-day position. It is a one-shift office, and is closed between the hours of 5:00 p.m. and 8:00 a.m.

does not apply to men who are notified before going home that they will be required to work after regular hours."

As stated above, in none of these instances was the train order relayed to a conductor at Bridgeville telegraph office. They were all at outlying side tracks, some distance from the telegraph office, and even had the Railway Company called out the agent-telegrapher at Bridgeville, it still would have been necessary for him to have relayed the train order to the train conductor. The only change would have been that it would have shortened the distance to the relay point.

Inasmuch as the train orders in question were not delivered or received at Bridgeville telegraph station, certainly no one was entitled to a call at this point to handle them. The claim of the Employees in each instance is for calls under Article III (c), which obviously is not proper, and the claims should be denied.

We would also like to point out Award No. 4259 which is a similar case. In this case a conductor copied train orders at a "blind siding" directly from the train dispatcher. This claim was denied. In the instant case the side tracks are "blind side tracks", that is, points at which no telegrapher is or has ever been stationed.

(Exhibits Not Reproduced.)

OPINION OF BOARD: The facts, which are not disputed, and the claim premised thereon and on the scheduled rules raises the issue of whether or not it is a violation of the Telegraphers' Scope Rule for a conductor, not a member of the Organization, to receive train orders transmitted to him by a telegrapher when (a) the conductor is at a station where there is an assigned operator but who is not on duty at the time; and (b) when the conductor is at a point within the switching limit of the station but at a considerable distance from the station where there is an assigned operator not on duty.

The Scope rule, set forth in the submission, does not by its terms define the work of Telegraphers. The Organization in its submission says the " * * * Scope Rules of this Organization are general in character and fall within the type of Scope Rules where tradition, historical practice and custom define the work covered * * * ." It is then added by the Organization that, by "custom" and "practice" the work of Telegraphers encompasses the "transmission and reception of messages, orders reports and other communication of record." To this generalization there is no dispute by the Carrier.

Further, it has long been accepted that the transmission of train orders was the work of Telegraphers. This includes the "receiving" as well as "sending" of train orders.

The instant claim, insofar as it relates to the messages of record received by the conductor at the Bridgeville Station, does not vary in its essentials from the claims arising at Oxford, Sherburne and Baldwinsville and considered by the Division in its Award 4516; and on the authority of that Award the claims based on a call from the station should be sustained.

It appears from the docket that a substantial portion of the claims is based on the fact that the conductor received train orders by phone at points removed a considerable distance from the station, but all within the switching limits of the Bridgeville Station. The conductor did not call the Bridgeville operator but received his train orders from an operator at another and nearest open station where a telegrapher was on duty.

In its Opinion to Award 4516, Referee Carter assisting, the Board said, in part:

"Where a Telegrapher's position is required and has been assigned to a station, a section foreman or others requiring a train line-up

who is working in proximity thereto, can properly obtain it from the operator. That he can obtain it by calling in person or by the use of the telephone is hardly subject to question. This for the reason that the use of the telephone under such circumstances is a substitute for a personal trip on his part and in no sense of the word is in lieu of work traditionally performed by a Telegrapher. But 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. It does not authorize him to call the dispatcher or some other station for the reason that he could not have done so formerly except by using the telegraph. In other words, when an employe not under the Telegraphers' Agreement uses the telephone under such circumstances, he is impinging upon work which traditionally belonged to Telegraphers."

This principle is applicable here, and is controlling.

The Carrier asserts that it has been the common practice for conductors to receive and copy train orders by phone from the dispatcher or operator. This is the same contention as made in Docket TE-3489 (Award 3521); and, as the Board said in its Opinion in that case, "This does not defeat an affirmative award * * *, but does place the parties under the rule announced in Award 3518, Docket CL-3466, with reference to its retroactive effect."

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 Employee 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 20th day of July, 1950.