

Award No. 5181  
Docket No. TE-5205

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Robert O. Boyd, Referee.

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**MISSOURI PACIFIC LINES**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Lines in Texas and Louisiana,

(a) That communication service covering the transmitting and receiving messages and/or reports of record by the use of the telegraph or telephone constitutes work which comes within the scope of the Telegraphers' Agreement.

(b) That the Carrier violated the provisions of the Agreement between the parties dated October 15, 1940, when it required or permitted an employe not covered by said Agreement to transmit by the use of the telephone a message at Mercedes, Texas at 1:10 A. M., Dec. 18, 1948.

(c) That C. O. Boiles, regularly assigned telegrapher-clerk at Mercedes with assigned hours 4:00 P. M., to 12:00 M., should have been called to perform this service which is covered by the scope of said agreement.

(d) That C. O. Boiles be paid a call under the Provisions of Rule 13 (d) account this violation of said Agreement on December 18, 1948.

**EMPLOYEES' STATEMENT OF FACTS:** An Agreement bearing effective date of October 15, 1940, between the parties was in effect at the time the dispute arose.

On December 18, 1948, an employe not covered by Telegraphers' Agreement at Mercedes, Texas, transmitted by the use of the telephone the following message:

"Mercedes, 1:10 A. M., Dec. 18, 1948

JBL Harlingen (Yardmaster)  
RDM Kingsville (Chief Dispr)

ART 15939 LCL express at Mercedes for movement on Vegt train to Houston.

D. S. Jackson  
Agent, Railway Express Agency."

Telegrapher-Clerk Boiles was available for service at the time this communication of record was transmitted. He made claim for one call. Carrier declined payment.

rule in the Telegraphers' Agreement on this property to support this or any other similar claim. The claim should, therefore, be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On December 18, 1948, an agent of the Railway Express Agency at 1:10 A. M. reported to a clerk at the Mercedes office of the Carrier that an LCL express car for Houston was ready for movement. The clerk made a note of this information and telephoned the yardmaster at Harlingen. It is not clear from the record whether the clerk or the yardmaster at Harlingen notified the dispatcher. The clerk who transmitted the message is not covered by the Telegraphers' Agreement and at the time the message was sent, no telegrapher was on duty. Telegraphers were on duty at this station from 8:00 A. M. to 4:00 P. M. and from 4:00 P. M. to 12:00 midnight. The claimant was regularly assigned to the second trick, 4:00 P. M. to midnight, but prior to 4:00 P. M., December 18, he had been working the first trick due to the absence of the occupant of that position. His own position was worked by another telegrapher. The claimant did not return to his regular assigned shift until after the message, the subject of the dispute, had been transmitted. The submission of the Petitioner on behalf of the claimant includes what purports to be a copy of the specific message transmitted by the clerk. The Carrier denies that such a message was sent and made a matter of record. They assert that there is no copy of any such message in the files of the Carrier at its Mercedes office or the Harlingen yardmaster or dispatcher office.

The claim is for payment of a "call" under provisions of Rule 13 (d) of the Agreement. The contention of the claimant is that the Carrier violated the Agreement when it permitted a clerk to telephone a message concerning the movement of a car; that the claimant should have been called to perform this service. The contention of the Carrier is that the purported message was not, in fact, sent as claimed; and that whatever message was sent, it was not a communication of record and the work performed did not fall within the scope of the Telegraphers' Agreement.

The message which is the subject matter of this dispute is addressed to yardmaster and chief dispatcher, and reads:

"ART 15939 LCL express at Mercedes for movement on Vegt. train to Houston."

It is signed by an agent of the Railway Express Agency.

The primary question presented is whether the work performed was within the scope of work contracted for by The Order of Railroad Telegraphers. The contract of the parties, however, does not define in specific terms the work covered. This Board in interpreting the Scope Rule has, of necessity, resorted to custom, past practices and tradition. By these interpretations some boundaries of the rule have been, more or less, established. Not all communication work is reserved to the Telegraphers. (See Awards 603, 652, 653 and 700.) In Award 4280, a message sent by a conductor to a dispatcher relating to cars without waybills was held not to be Telegraphers' work. On the other hand, messages sent by telephone affecting the control of transportation such as line-ups to section foremen are within the Scope Rule (Award 4516). But in Award 1983, receiving line-ups by track walkers was held not within the scope of the Agreement; and in Award 4208, telephone messages between dispatcher and members of train crews was held not to be within the scope of the Telegraphers' Agreement. In Award 1983, emphasis was placed on whether the message was a matter of record; but in Award 4265, this was held not to be the sole criterion.

Before the advent of the telephone, the transmission of the message like the one with which we are here concerned would have been by the use of the telegraph. But as we have seen by the Awards mentioned above, that is not the sole measurement of the scope of the Telegraphers' work.

As we have seen, several exceptions to such a test have already been established. We have no desire to attempt a definitive description of the scope of Telegraphers' work. By reason of the character of the communication which was received and transmitted, we would apply the test of whether it is a communication relating to the control of transportation and if such a kind, a record should be preserved of it.

We do not believe the message here involved is of that description. It is advice from the Railway Express that a car is ready for movement. This was merely notice and by itself could not have affected the control of transportation.

There is a dispute between the parties as to whether this message was a matter of record, and whether messages of like character were preserved. This Board does not have the facilities to reconcile such conflicting statements of an essential fact. So we must conclude, on this point, that the evidence is insufficient to establish it as a message of record.

Therefore, for the reasons thus expressed, we conclude that the Agreement has not been violated as charged in the claim.

**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 Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon,  
Acting Secretary.

Dated at Chicago, Illinois, this 11th day of January, 1951.