

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Jay S. Parker, Referee.

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island & Pacific Railroad that:

1) The Carrier violated the terms of the prevailing agreement between the parties when, on November 19, 20 and 21, 1949, it required and/or permitted employees not covered by said agreement to copy lineups of train movements at Nevada, Iowa, by use of the telephone at a time when the regular assigned Agent-Telegrapher was not on duty.

2) In consequence of this violation the Carrier shall pay M. A. Sandmeier, Agent Telegrapher at Nevada, Iowa, under the call and overtime rules of said agreement on each of the aforesaid dates that employees not under the agreement were required or permitted to copy lineups of train movements at this point.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties hereto, bearing the effective date of August 1, 1947, (amended in part July 7, 1949) as to rules governing working conditions, and of September 1, 1947 (as amended) as to rates of pay, copies of which are on file with your Board.

At Nevada, Iowa, on the aforesaid claim dates, there were two employees under the scope of the Telegraphers' Agreement, with assignments as follows:

Agent-Telegrapher	8:00 A. M. to 4:00 P. M.
	Rest Days Saturday and Sunday
Telegrapher	11:59 P. M. to 7:59 A. M.
	Rest Days Saturday and Sunday

These positions were blanked (not relieved) on rest days.

At 9 P. M. November 19, 1949, claimant's assigned Saturday rest day, the dispatcher at Des Moines, Iowa, transmitted the following lineup and

of the instances, they were obtained from an employe covered by the telegraphers' agreement. We maintain that a claim is not proper and that there was no violation of the intent of the agreement.

The claim of the employes is vague and indefinite. They do not indicate what they are claiming. They simply say that they desire Mr. Sandmeier paid under the call and overtime rules of the agreement. This claim is so vague and indefinite we do not know what precisely is claimed, time or money, and we are therefore unable to make a proper defense to it. We urge this Board to dismiss this claim.

Moreover, this is not the claim that was handled on the property. In General Chairman Christian's letter dated December 22, 1949, file 130-841, addressed to the Carrier's Manager of Personnel, he made claim in favor of Mr. Sandmeier at Nevada, Iowa, for two calls November 19 and one call on November 20, 21, 1949. November 19 and 20 were Mr. Sandmeier's rest days, and the alleged violation on November 21 occurred after the assigned hours of Mr. Sandmeier. These are the only claims that were before us on the property and therefore the claim now before the Board, in addition to being vague and indefinite to the extent that we cannot prepare proper defense to it, is contrary to Circular 1 of the National Railroad Adjustment Board and the Railway Labor Act, as amended.

This claim should be:

(1) Dismissed because it is vague and indefinite to the extent that we cannot prepare a proper defense nor determine whether or not it is supported by the rules of the agreement.

(2) It should be dismissed because it is not the same claim as handled on the property.

If the Board should be in disagreement with the contentions advanced immediately above, then the claim should be denied because there was no violation of the intent of the agreement.

(Exhibit not reproduced.)

OPINION OF BOARD: Due to a right-of-way fire the section foreman at Nevada, Iowa obtained a line-up by telephone from the telegrapher at Cambridge, Iowa, at about 9:00 P. M. on November 19, 1949. For a like reason the same section foreman, at the same location, secured a line-up by telephone from the telegrapher at Cambridge, at approximately 6:40 P. M. on the following day, November 20th. Because of a situation resulting from a broken signal control line wire the signal maintainer at Nevada obtained a line-up from the dispatcher at Des Moines by long distance telephone on November 21st at 9:30 P. M. On all dates in question two employes under the scope of the Telegraphers' Agreement were regularly assigned at Nevada. However, all line-ups in controversy were secured outside the hours of their respective assignments and while they were off duty. Claimant Sandmeier, one of the telegraphers so assigned, makes this claim, basing it on the premise that under and by virtue of the scope rule of the current agreement he was entitled to be called for the purpose of receiving these three messages.

The Carrier apparently concedes that except in emergencies the receiving of line-ups of the type here involved is work belonging to the claimant or other telegrapher assigned at Nevada. Its principal argument is based on the premise the line-ups involved were sent to the section foreman and signal man because of the exigencies of an urgent situation, calling for immediate action in order that life and property be protected. Under our awards if that be true an emergency existed and its action did not result in a violation of the rule of the agreement relied on by the claimant, even though line-ups of the same type, absent an emergency, would otherwise come within the scope of its terms. See Awards 4948, 4259 and 2817.

The conclusion just announced calls for an examination of the record. While it discloses some dispute between the parties as to whether an emergency existed on the dates in question we are convinced that when carefully examined it discloses their differences on that point are more theoretical than real. In his ex parte submission, the claimant concedes fires on the right of way are of an emergency nature, endangering lives and causing substantial loss of property. He then states he does not deny but adds that it is questionable whether the circuit failure on November 21st, for which the signal maintainer was called, was an emergency. But that is not all. His rebuttal and final submission contains the following statement:

"We concur there definitely were emergencies at Nevada, Iowa, on November 19 and 20, 1949, endangering property if not life, and to a lesser degree on November 21, 1949."

In the face of the claimant's own admission as heretofore related, to say nothing of other facts which would lead us to reach a like conclusion even if he had not made them, we are constrained to hold the record clearly establishes an emergency which, under the rule announced in the foregoing awards, permitted the Carrier to take the action heretofore described without violating the current agreement.

Much is said in the record with respect to Mediation Agreement A-560 relied on by the Carrier as additional authorization for its action. We are inclined to agree with the claimant this case has little, if any, application under the confronting facts and circumstances but for an entirely different reason than the one he advances. Of a certainty it is not decisive. However, it should perhaps be stated this agreement, prohibiting train dispatchers from transmitting train orders by telephone direct to train and engine service employees except in emergency, also the latter employees from receiving such orders except in a like situation, is indicative of an understanding on the part of the Organization, of which the claimant is a member, as well as the Carrier, that the scope rule of the current agreement is susceptible for the construction given it in this decision and the awards therein cited.

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 under the existing facts and circumstances the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 6th day of September, 1951.