Award No. 6330
Docket No. TE-6337

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad that:

(a) The Carrier violated the provisions of the existing Agreement when on December 23, 1950, and on January 6, 1951, it failed to call telegrapher C. R. Caraway for service and instead required or permitted an employe not covered by the Agreement to assume and perform the duties of the telegrapher who was regularly assigned to the position of Manager at Atchison, Kansas, this position being regularly assigned to C. R. Caraway, Monday through Friday.

(b) The Carrier shall now compensate C. R. Caraway on the basis of one call on each of the dates claimed.

EMPLOYES' STATEMENT OF FACTS: Prior to September 1, 1949, the position of Manager, Atchison, Kansas, was assigned 8:00 A. M. to 5:00 P. M., with one hour for meal between 11:30 A. M. and 1:30 P. M., six days per week, Monday through Saturday, with one call on Sundays (Rest Day) 9:00 A. M. to 12 noon. (See Employes' Exhibit 1.) Only one telegraph position, that of Manager, exists in this office.

Effective September 1, 1949, the effective date of the 40-hour week Agreement, the hours of assignment of this position were changed to 8:00 A. M. to 5:00 P. M., with one hour for meal, Monday through Friday, rest days Saturday and Sunday. (Employes' Exhibit 2.)

On December 23, 1950, which fell on Saturday, a rest day of Claimant, the night assistant chief dispatcher acting for C. A. Hughes, Trainmaster, at 9:34 P. M. and 9:57 P. M., respectively, transmitted by telegraph or by telephone from Atchison the following messages of record:

"Atchison, Dec. 23, 1950

B. E. Madden, Falls City
Fireman C. Sawyer, Falls City
Hall, Lincoln.

Madden send fireman to Lincoln No. 105-605 Sunday Dec. 24 protect No. 696-695 place C. Sawyer account 7-day clause.

C. A. H. 9:34 P. M."

not been handled exclusively, by tradition and custom, by telegraphers. In order that the members of the Board may know the nature of this report and the volume of wordage it contained we are attaching a copy of it as Carrier's Exhibit "C". In transmitting this report the printed portion is not sent—only the symbols and the answers. For example, the first three items would be sent as follows:

"A-519 b-4143 c-10:30 A. M. Jan. 6"

Thus you will note that taking into consideration all of the data sent, allowing time for getting the phone connections, allowing time for the receiving telegrapher to transcribe the data on form as transmitted and multiplying by two to take care of separate calls to Falls City and Kansas City, the work involved in this dispute could be done in about twenty minutes of time. The Employes would have you order the Carrier to pay this claimant $5.53 for this twenty minutes of work on his **rest day** in the face of vigorous contentions of his representatives for **relief form work** on such day. And the only support they have indicated for the claim is a contention that telegraphers have the exclusive right to do the work involved. We find nothing in the Scope Rule or any other rule of the Telegraphers' Agreement that establishes any such right.

With respect to the telephone communications on December 23, 1950, it is noted that one was completed at 9:34 P. M. and the other at 9:57 P. M. At the most, the time required would not have exceeded thirty minutes. And these communications were not even "of record" as we understand the meaning of that term in various Board awards. They certainly had nothing to do with the movement of trains.

It is our opinion that we have established the fact that none of the communications involved in these claims were messages of record traditionally and customarily handled exclusively by employes covered by the Telegraphers' Agreement, but we would like to go further and state what would be our position in the event the service performed on either date should be held to be covered by the Telegraphers' Agreement. As we have stated previously in this submission, the Carrier had on duty on both dates at the times the communications were transmitted, an employe subject to the Telegraphers' Agreement who could have been required to handle them within his regular hours without additional compensation. The Carrier maintains twenty-four hour telegraph service seven days per week at its "S" office in Atchison and we just cannot understand how a charge of violation of the agreement could be sustained when a telegrapher was relieved of work he could have been required to do for the pay he has already received. There is no rule in the Telegraphers' Agreement that provides for any penalty in such a case, and even if it should be held that there was a violation, your Board has said when there is a violation of a rule that does not specify the measure of damages, the amount will be that which would have been earned if there had been no violation, less any amount earned in other employment. See Awards 1608, 4105, 4291, 4325 and 4739.

The amount that would have been earned in these cases, violation or no violation, is exactly that which has already been paid. If the work had been considered subject to the Telegraphers' Agreement, the communications here involved would either have been handled by telegraphers on duty during regular hours or they would not have been telephoned at all. We just cannot see how a situation of this kind could possibly justify the claim of an employe off duty on his rest day pursuant to vigorous demands that he be relieved from duty two days per week.

(Exhibits not reproduced).

OPINION OF BOARD: Claimant here, C. R. Caraway, held position designated as Manager, Atchison, Kansas, assigned hours 8:00 A. M. to 5:00

P. M. Monday through Friday, with Saturday and Sunday as rest days. Claim is made for a call, on the grounds that the Carrier failed to call claimant on December 23, 1950 and January 6, 1951 (both Saturdays) and instead required or permitted individuals outside of the Agreement to perform duties of this position at the point in question in contravention of Rules 1 (c), Section 2 of Rule 8 and Rules 9, 10 (c), 11 and 19 (d).

There are three offices maintained by the Carrier in the immediate area, that is the Union Depot office, the "S" office and the "N" office. The claimant was stationed at the latter office and occupied the only position in that office coming within the effective Agreement.

On each of the enumerated dates the work which claimant asserts was rightfully his was performed by individuals not covered by the said Agreement. On Saturday, December 23, 1950, an Assistant Chief Dispatcher transmitted two messages concerning Orders for fireman. On Saturday, January 6, 1951, a Dispatcher, in accordance with instructions of the Trainmaster, transmitted an accident report.

The Organization takes the position that the claimant had the right to be called to perform this work on both dates in question and, inasmuch as he was not so called, he should be compensated as though he had been called.

In brief, the Respondent asserts that the work here involved was not of the type which telegraphers have the exclusive right to perform in that the messages transmitted on December 23, 1950, were not communications of record which had in the past been handled exclusively by telegraphers; and that while the accident report handled on January 6, 1951, was considered a communication of record, the telegraphers had not been granted, under the effective Agreement, the exclusive right to transmit such reports.

While not controlling, it is worthy of note that the work of December 23, 1950, was performed outside of the assigned hours of the claimant while the work of January 6, 1951, was performed within the assigned hours of the position of Manager at "N" relay office.

It is not subject to question that if it is determined that the work performed on either or both of the dates in question comprises duties which by custom, practice and tradition are those ordinarily performed by telegraphers that the claimant is entitled to be compensated for a call, when Section 2 (i) of Rule 8, Section 1, IV of Rule 9 and Rule 10 (c) are considered in their proper light, and relation, each to the other.

In determining whether or not the work here is compensable as alleged, it is apparent that this Board has drawn a line of demarcation between messages that are communications of record and those which are not.

As to what constitutes a message of record, this Board, in Award 5660, stated:

> "While it does appear that the message in question was reduced to writing, it does not appear that there was any requirement that it was to be considered a message or report of record. The mere fact that somebody reduced the substance of a telephone call to writing does not make it a message of record. Nor does it appear that there was any requirement that such a message be sent."

It is the opinion of the Board that the two messages transmitted on Saturday, December 23, 1950, were not messages of record and, on the facts and circumstances present herein it was not a violation of the effective Agreement for the Assistant Chief Dispatcher to transmit the messages in question.

We are of the opinion that transmission of accident reports constituted the handling of a communication of record and is work which ordinarily and

by tradition, custom and practice belongs to telegraphers to the exclusion of all others.

We are likewise unimpressed by the contention of the Respondent that this work does not belong exclusively to the telegraphers. It is admitted that a majority of accident reports are transmitted by employes covered by the effective Agreement. Thus, the parties here have by application and interpretation placed such duties within the framework of that belonging to those covered by the Agreement and, in this instance, the claimant.

We are of the opinion that the claimant should have been called to perform the work in question on January 6, 1951.

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 Employes involved in this dispute are respectively Carrier and Employes 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 did not violate the effective Agreement in not calling claimant to perform the work in question on December 23, 1950.

That the Carrier violated the effective Agreement when it failed to call the claimant to perform the work in question on January 6, 1951.

AWARD

Claim disposed of in accordance with the Opinion and Findings.

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of September, 1953.