

Award No. 6343

Docket No. TE-6077

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Livingston Smith, Referee

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**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:

- (1) The Carrier violated and continues to violate the provisions of the prevailing agreement between the parties when on December 11, 12, 13, 14, 15, 26, 27, 28, 1950, April 24, 25, 26 and 27, 1951, it required and/or permitted and continues to require and/or permit employes holding no rights under said agreement by use of the telephone to "OS" (report—transmit the time of departure, called and time of arrival and tied up) work trains which begin and quit work at Monessen, Pennsylvania.
- (2) The Agent-Telegrapher at Monessen, Pa., J. F. Polen, shall be paid a "Call" as provided in Article III (c) of the Agreement of November 1, 1936, on each of the calendar days listed in 1, except for the calendar days December 14, 27, 1950, April 24, 25 and 26, 1951, he shall be paid for two calls.

**EMPLOYEES' STATEMENT OF FACTS:** An agreement by and between the parties bearing effective date of November 1, 1936, is in evidence, copies thereof are on file with the National Railroad Adjustment Board.

In the revised Wage Scale of the Agreement, effective September 1, 1949, the following positions are listed:

Monessen .....	Agent-Telephoner
Monessen .....	Telephoner.

Assigned hours of the Agent-Telephoner were 10:30 A.M. to 6:30 P.M. daily. On or about October 4, 1949, the "telephoner" position, hours 6:30 P.M. to 2:30 A.M., daily, was declared abolished by the Carrier. Effective same date (October 4, 1949) the assigned hours of Agent-Telephoner were made 10:30 A.M. to 7:30 P.M. daily, with one hour for meal.

On December 11, 12, 13, 14, 15, 26, 27, 28, 1950, April 24, 25, 26 and 27, 1951, a work train "tied up" nightly at Monessen, Pa. Conductor in charge of those work trains transmitted "OS" reports direct to the train dispatcher, by telephone, on each of the days on which said work train "tied up" at Monessen, Pa., at a time of the day when the Agent-Telephoner was not on duty.

"The Board, with Referee Carter assisting, said in Award 4280:

"The evidence does not show that it actually was made a matter of record or that there was any requirement that it was to be considered a message of record. Assuming for the purposes of this decision without so deciding, that such fact, if established, would support an affirmative award, there is a failure of proof as to this phase of the case."

"We must likewise find that there has been a failure of proof."

### CONCLUSION

The Carrier has shown that:

(1) The telephone conversations between the work train conductor and the dispatcher were not matters of record and were not work to which employees under the Telegraphers' Agreement have contractual monopoly rights.

(2) Such conversations are simply ordinary railroad operation and are not violative of any Agreement.

(3) This claim is clearly an attempt to force the Carrier to use employees covered by the Telegraphers' Agreement where none are required and where they could not serve any useful purpose. It is therefore a make-work demand.

(4) This claim is unfounded, is at variance with efficient, intelligent operation, is not supported by any rule, practice or precedent or by any technical or logical premise, and it should be denied.

In view of the foregoing, the Carrier respectfully requests that the Board deny the claims of the Employees.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claim here is made by one J. F. Polen, Agent-Telegrapher, Monessen, Pa., that on the dates cited, Respondent required and/or permitted employees not covered by the effective agreement to transmit or receive information concerning train movements.

Monessen is a one-man station, with Claimant holding assignment 10:30 A. M. to 7:30 P. M., daily with one hour for lunch.

The Organization contends that the sending or receiving of information of the type here involved comes within the Scope of the effective agreement, and that Claimant here is entitled to a "call" each time a "communication of record" was handled outside the assigned hours of the position.

The Respondent takes the position that the work here is not the exclusive work of a telegrapher, that this installation of CTC system removed this type of message from the status of "communications of record"; and that long existing custom and practice on this property clearly show that the sending and receipt of orders is not work of telegraphers, to the exclusion of all other crafts.

Awards of this Division, legion in number, hold that messages concerning time of arrival, tie-up and departure of train movements are communications of record. We are not impressed by the contentions of the Respondent that the installation and operation of CTC equipment changed the kind or character of the work involved; or the necessity of its transmission and recording in this instance. While it is true that the operation of CTC equipment may diminish or completely eliminate the need or necessity for tele-

graphers; and that under such circumstances the Organization has no valid ground for complaint; it is likewise true that when (as here) it is necessary to send a communication of record by means other than the use of CTC equipment, a telegrapher is entitled to the work.

While the Scope Rule of the effective agreement does not specifically designate that work is covered, it is clear that the sending and receiving of communications of record belong thereunder.

Each of the parties have cited awards of this Division involving the parties hereto and the facts and circumstances of each have been examined and considered. (Awards 3521, 4922, 4923, 4927).

We are of the opinion, and so find and hold that this claim is valid as to those times when communications of record were sent or received outside of the assigned hours of the Claimant.

**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 Carrier violated the Agreement.

#### AWARD

Claims (1) and (2) disposed of in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 29th day of September, 1953.

#### DISSENTING OPINION TO AWARD 6343, DOCKET TE-6077

An Award is no better than the logic upon which it is based. The Award herein is based upon the wholly unsupported, illogical and false opinion that the installation and operation of CTC equipment did not change the kind or character of work involved and that telephone communications are a matter of record notwithstanding no record is made thereof.

While the Organization herein alleged that the conductor copied "orders" on prescribed forms and that the dispatchers made a record thereof, it failed to sustain its burden and submitted no proof in support thereof.

On the other hand, the Carrier showed that there were no communications of record handled and that no written record was made or necessary of the telephone conversations between the conductor and the dispatchers. In support thereof, it submitted a statement from the conductor in which he admitted he had no supply of forms in his caboose while he was conductor

on the work train, and the Carrier submitted statements from the dispatchers to the effect that they at no time wrote or copied any orders given the conductor or gave the conductor any orders which he was required to copy.

As contrasted with the foregoing record, there was no conflict between the parties that communications of record were handled in the cases covered by three out of the four Awards cited in the Opinion of Board herein. One of those three Awards and the fourth Award cited denied the claims therein, the latter based upon conflicting statements of the parties, as in the instant case, as to whether or not record was in fact made of the communications handled. However, the majority herein elected not to follow the precedent established thereby.

For the foregoing reasons the Award herein is in error and we dissent.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ E. T. Horsley

/s/ C. P. Dugan

/s/ J. E. Kemp