

Award No. 6588

Docket No. TE-6511

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Denver and Rio Grande Western Railroad, that:

(1) The Carrier violated and continues to violate the terms of the agreement between the parties when it permits or requires Section Foremen and other employees not covered by said agreement to copy train lineups each working day at Leyden, Plain, Cliff, Winter Park, Tabernash, Granby, Sulphur, Radium, McCoy, Yampa, Oak Creek, Mount Harris, Hayden, Sedalia, Husted, Kelker and Fountain.

(2) The Carrier shall be required to compensate the Agent-Telegraphers at Winter Park, Tabernash, Granby, Sulphur, Yampa, Oak Creek, Mount Harris and Hayden on the basis of a call on each occasion Section Foremen and other employees not covered by said agreement have copied train lineups at a time that these Agent-Telegraphers are not on duty commencing April 10, 1950, and continuing each day and on each occasion thereafter until the violation is corrected, and

(3) The Carrier shall be required to compensate the senior idle employee on the basis of a day's pay on each occasion Section Foremen and other employees not covered by said agreement have copied train lineups at Leyden, Plain, Cliff, Radium, McCoy, Sedalia, Husted, Kelker, and Fountain commencing April 10, 1950, and continuing thereafter until the Carrier corrects the violation.

EMPLOYEES' STATEMENT OF FACTS: During the year of 1947 there was a dispute on this property concerning section foremen copying train lineups. Not being able to resolve this dispute on the property, it was referred to your Board for adjudication. That claim was decided by Award 4772 on March 21, 1950. It was put into effect on this property as indicated by the following letters exchanged between the Carrier and the Organization:

In the territory involved in this dispute, instructions of long standing have been to the effect that train dispatchers would not furnish lineups to Section Foremen and these instructions are still in effect.

It may be possible that at 7:40 A. M. and at 12:35 P. M., when the Train Dispatcher puts out the lineup to all Agents and Telegraphers, that some Section Foremen may be listening in on the dispatcher's telephone and copying for their own use that portion of the information the Dispatcher gives the Agent or Telegrapher, which they desire. This may be done rather than securing same from Agents or Telegraphers and having them repeat it. The instructions are, however, that Section Foremen should secure their lineups, if a telegrapher is employed at the point and not on duty, from an agent or telegrapher at the nearest office of communication, who relays it to the section foremen. If, during the day, Section Foremen or others come in on the dispatcher's telephone and ask for a revised line-up, the train dispatcher furnishes the line-up to the nearest office of communication where it is relayed to the Section Foremen.

The Carrier holds the manner in which lineups are handled on the territory involved is strictly in accord with the provisions of Award 1320 of your Board, which Award covers an identical claim on this property involving the same organization.

Lineups can be secured by Section Foremen in the Denver-Craig territory from the agents and operators at North Yard-Denver, Sulphur, Kremmling, Orestod, Phippsburg, Steamboat Springs, and Craig. In the territory south of Denver they can be secured at Littleton, Palmer Lake and Colorado Springs.

During discussion of this case, the Organization cited Award 4772 of your Board which covers a claim on this property as supporting the claim. The Carrier holds that Award 4772 applies only to the territory Pueblo to Salida and contends that Award 1320 is still controlling in other locations and that the latter Award has established the pattern with respect to telegraphers—any telegrapher—furnishing Section Foremen on this property with lineups.

The Carrier asserts the Organization is seeking through your Board, an award, which would require the Carrier to have telegraphers employed at points where Section Foremen or any other employees using line-ups are employed, despite the fact the present practice in the territory involved of obtaining line-ups from telegraphers has been in effect for many years and despite the fact there would at many points—such as those in the instant case where no telegraphers are employed—be nothing for telegraphers to do but to secure one or two lineups per day.

The Carrier holds there is no jurisdiction for the instant claim and it should be denied just as the identical question in this dispute was denied by Award 1320.

All data in support of the Carrier's position has been submitted to the Organization and made a part of the particular question in dispute. The right to answer any data not previously submitted to Carrier by the Organization is reserved by Carrier.

Exhibits not reproduced).

OPINION OF BOARD: The facts and contentions of the parties are set out in the record, therefore, no useful purpose would be served in a detailed review of the same in this Opinion.

In brief the Petitioners rely on the facts and Award 4772, (between the same parties), which award was based in part on the findings made in Awards 3671, 3881 and 4516.

Respondent Carrier relies on Award 1320, also on the property of the Carrier, but on a different division thereof, and on practice over a period of years.

We reaffirm the finding made in Award 4772. As said in that Award:

"As appears from the submissions, the factual situation and the rule resulting in Award 4516 are the same as those premising the present claim; that award was carefully considered, and further inconsistency in decision can only plague the industry with confusion worse confounded. We think that award should be followed."

On behalf of Carrier it is submitted herein that in Award 4772 Carrier made no attempt to show practice, thinking that reliance upon Award 1320 was sufficient.

However, it will be noted in several awards on this property relating to similar situations, practice has been considered and undoubtedly Referee Mortimer Stone gave consideration to this phase of the matter when in the last paragraph of that Opinion it is stated in part:

"However, in view of the fact that prior Award 1320 was made on its property, the Carrier should not be penalized for operating consistently with that award. * * *"

Claims 1 and 2 should be sustained. Claim 3 denied in following Award 4772, rather than other awards cited in support of Claim 3, in order that a consistent plan be followed on this property, which we think correct.

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

Claims 1 and 2 sustained. Claim 3 denied in accordance with Opinion.

AWARD

Claims 1 and 2 sustained; Claim 3 denied as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 27th day of April, 1954.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

**Interpretation No. 1 to Award No. 6588
Docket No. TE-6511**

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: The Denver and Rio Grande Western Railroad Company.

Upon application of the Carrier involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

It was the intent that Claim 1 be sustained as to stations listed therein where a telegrapher is employed, otherwise denied.

Claim 2 sustained.

Claim 3 denied.

This interpretation is confined to claims as shown in this record solely.

Referee LeRoy A. Rader, who sat with the Division, as a member, when Award No. 6588 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: (Sgd.) A. Ivan Tummon
Secretary**

Dated at Chicago, Illinois, this 15th day of April, 1955.