

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware, Lackawanna and Western Railroad Company that:

- (a) The Carrier has violated and continues to violate the provisions of the Telegraphers' Agreement when and because it has required or permitted and continues to require or permit employes (motor car operators in this instance) not covered by the said Telegraphers' Agreement to copy line-ups at Owego, New Village, Port Murray, Oxford Furnace, Bridgeville, Manunka Chunk, Conklin, LaPlume, Alford, Duryea, Elmhurst, Gravel Place and West Henryville, which line-ups govern the movement of track cars; and
- (b) In consequence thereof the Carrier shall pay a day's pay at the prescribed rate (the established rate progressed) to the senior idle extra employe, or if no extra employe available, then to the senior idle employe, for each day and at each location, on a day-to-day basis, that said line-ups have been or may be so copied; the identity of the employes entitled to receive payments shall be determined by a joint check of the Carrier's records.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of November 1, 1947, by and between the parties and referred to herein as the Telegraphers' Agreement is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Prior to certain dates and at each of the locations mentioned in the Statement of Claim, employes covered by the Telegraphers' Agreement were employed. The Carrier declared the positions abolished but the communication facilities were retained in service. For example, the agent-operator position at Duryea was declared abolished February 5, 1944, but the telephone facilities were kept in service.

In each instance the Organization claimed a day's pay in behalf of the senior idle extra employe or if there was no idle extra employe then in behalf of the senior idle employe for each day a line-up was copied by an outsider—

Carrier if a telegrapher was on duty at that point. This is so because his telephone conversation with the telegrapher at Chatham would have been in lieu of a trip or messenger and would not infringe upon the work traditionally and historically performed by telegraphers. It is true that the distinction appears to be trivial from the practical viewpoint but it is necessary in order to maintain consistency under the agreements as they are drawn. It is only by adhering strictly to the yardstick which measures the telephone work reserved to telegraphers that an orderly interpretation of the rules can be had."

The cases which the Carrier has listed in its Statement of Facts are in the same category as regards the use of the telephone as outlined in the above interpretation in Award No. 4967 of your Board. **In all instances line-ups were received through operators or towermen coming under the Telegraphers' Agreement in lieu of a trip or messenger.**

Particular attention is directed to that part of paragraph (b) of the claims as progressed to your Board, in which the employees are asking for a day's pay at the prescribed rate (the established rate progressed) to the senior idle extra employe, or if no extra employe is available, then to the senior idle employe, for each day at each location, on a day to day basis, that said line-ups are or may be copied; the identity of employees entitled to receive payments to be determined by a joint check of the Carrier's records.

All claims listed in the Carrier's Statement of Facts were not handled on the property on the basis under that part of paragraph (b) of the employees' statement of claim and, therefore, are not properly before your Board. See claims as made on the property and outlined in the Carrier's Statement of Facts.

Moreover, a penalty claim for one day's pay to any telegrapher, regardless of his status, that Telegrapher's work is performed at a location where a telegrapher is not assigned cannot be sustained. There is no rule, practice, or precedent to provide for any such payment.

Even if the claims were justified, the most that any telegrapher would be entitled to would be for payment on a "call" basis. See Award 4967.

For reasons set forth above and particularly the fact that the principle involved was settled on the property by decision from your Board in December, 1946, the claims now being progressed to your Board should all be denied.

These disputes have been handled under the Railway Labor Act as amended.

OPINION OF BOARD: At each of the stations mentioned in this claim, the Carrier at one time maintained positions covered by the Telegraphers' Agreement. Over a period of years, subsequent to 1944, these jobs were terminated due to changes in the nature of the Carrier's service to these locations. The telephones which were formerly used by the telegraphers remained. From time to time since the termination of the telegraphers' positions, the Carrier has required motor car operators and other maintenance employees to use the telephones for purposes of getting line-ups of train movements. The claims specify thirteen different dates between July 21, 1949 and May 19, 1953, when such line-ups were copied by employees not covered by the parties' Agreement. Admittedly there have been other occasions when similar incidents occurred.

The Scope Rule of the parties' Agreement merely lists the twelve job classifications included under the Agreement. It in no way defines the duties or functions of each. But traditionally track car line-ups have been transmitted and received by telegraphers, wherever telegraphers have been stationed. As to the receipt of track car line-ups at points where no telegraphers

rapher has previously been assigned, our decision in Award 4516 was to the effect that such was not covered by the Scope Rule of the parties' Agreement.

The fourth claim in Award 4516, which involved the same parties as in the instant case, concerned the copying of track car line-ups by foremen and maintenance employes at a location where no telegrapher was or had been employed. It was our conclusion that, since no telegrapher had a position at the point in question, no telegrapher had been injured by the fact that employes not covered by the Agreement had received the line-ups. Consequently the claim was denied.

Our conclusion on the fourth claim in Award 4516 was that, "The use of the telephone under such circumstances is in lieu of a personal trip or of messenger service". The situation now before us differs in that there had at one time been telegraphers stationed at all of the points mentioned in the claims. Thus we are concerned with the question as to whether the Carrier may terminate telegraphers' positions and later have track car line-ups copied at the same stations by employes not covered by the Agreement, in the same manner as at places where no telegrapher had previously been stationed.

The extent of coverage of the Telegraphers' Scope Rule has been the subject of many cases decided by this Board. We have not been consistent in our previous decisions relative to this subject. Decisions have been made and reversed in later cases. Even on this Carrier's property our decisions have not been consistent. However, certain of our rulings have held that the transmission and receipt of messages of record which were either currently or previously the function of telegraphers remain subject to the terms of this Organization's Scope Rule. Awards 4516, 5038 and 5086.

The facts in the several cases differ. The instant one is no exception to this rule. We are here confronted with a situation in which the Carrier's operations either declined or were shifted to other centers. There was not sufficient work to warrant the continuance of telegrapher's positions at the thirteen stations mentioned in this claim. The copying of track car line-ups on occasions by employes not covered by the Telegraphers' Agreement has been sanctioned by this Board on many occasions. Awards 1145, 1320 and 3363.

At the locations listed in Petitioner's Statement of Claim no telegraphers were employed either currently or for some time previous to the filing of this claim. In each instance motor car operators secured line-ups from telegraphers at the nearest telegraph stations. That is, in each instance the line-ups were obtained from employes within the scope of the Agreement.

In Award 4516 we concluded that where no telegrapher was assigned it was proper for other employes to receive by telephone and copy track car line-ups. We think the situation in the instant case is comparable. True, in the previous case there had not been, at any time, a telegrapher stationed at the position in question; whereas there had been telegrapher positions at the thirteen points mentioned in Petitioner's Claim. However, these positions had been terminated months or years before this Claim was filed. We think it only proper to regard these as positions where no operator was stationed and to treat the matter as we did in the fourth claim considered in Award 4516. That is, these should be regarded as situations in which the motor car operators received the line-ups by telephone "in lieu of a personal trip or of messenger service".

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1955.