

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

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

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

1) The Carrier violated the terms of the Agreement when on December 17, 1953, it permitted or required employes having no rights under the Agreement to test telephone circuits at Berwick, Pa., work not incidental to their assigned duties, at a time when the second trick clerk-operator was available but not on duty; and

2) As a result of this violative action, Carrier shall now compensate H. Dalto, the clerk-operator, in an amount equal to two hours at the overtime rate, for being deprived of this work.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties bearing an effective date of July 1, 1953.

At page 48 of the Agreement there is listed a position of Clerk-Operator at Berwick, rate \$1.771 per hour, assigned hours, 3 P. M. to 12 Midnight. Among others employed at this station are an exclusive agent and a clerk, neither of whom is under the Agreement here being considered.

At 8:25 A. M. on December 17, 1953, the test office at Scranton rang the Berwick office on the telephone. Agent Reese an employe outside the Agreement, answered the telephone and was told by the wire chief at Scranton to open a certain switch on the switchboard, which he did, clearing a telephone circuit which had been unserviceable due to stormy weather. The wire chief then rang the office at Shickshinny, an adjacent station, and tested the circuit with the telegraph employe at that station. The circuit showing clear, the wire chief again rang the Berwick office. This time Clerk Wilcox, an employe also outside the Agreement, answered the telephone and was told by the wire chief to leave the switch open. Wilcox replied, "OK 605 open."

Claim was filed on December 20, 1953, for a "call" for the Clerk-Operator, H. Dalto, for not having been called to perform this work, and same was denied. Upon appeal to the highest officer of the carrier to whom

the covers of the Telegraphers' Agreement which specifies that testing telephone lines is work which comes within the scope of the Telegrapher's Agreement.

The Carrier categorically has never allowed any claim for testing telephone lines such as is involved in this case and even were any such claim allowed it would have been in error. It was simply an incident to maintenance and it can well be said of the claim that such trivia is encompassed by the scope rule. As Judge Carter said in Award 2932 of the Third Division:

"If it should be so construed we would be well on our way towards the creation of a contractual absurdity by interpretation.

* * * * *

"The contentions of the Organization attempt to draw too fine a line and tend to inject too much rigidity into railroad operation when a reasonable amount of flexibility is essential. * * *"

All statements and arguments of the Employees at variance with the Carrier's position and statements herein are denied by the Carrier.

There is no rule, precedent or practice to support the Employees' claim for a "call" in this case. Claim is without merit and should be denied.

All data in support of the Carrier's position have been handled with the Employees on the property.

OPINION OF BOARD: The basic facts here are not in dispute. On December 17, 1953, the test office or the telephone department at Scranton called the Berwick office on the telephone. A clerk-operator is assigned from 3:00 P. M. to midnight at Berwick but was not on duty at the time of the telephone call—8:45 A. M. The telephone was answered by the agent and he was told by the wire chief on the other end of the line that the local telephone line was noisy and that he would like to try to locate the trouble. The wire chief told the agent to open a certain switch on the switchboard. The agent did so, clearing a telephone circuit which had been unserviceable due to stormy weather. The wire chief then rang the office at Shickshinny, and tested the circuit with the telegraph employe at that station. The circuit showed clear, and the wire chief called the Berwick office again and spoke to the clerk; he told the clerk to leave the switch open.

The claim is that the handling of the switch at Berwick was "testing" and therefore was telegraphers' work which the clerk-operator should have been called to perform.

There are a number of conflicting contentions by the parties. Petitioner states that the work involved has historically and traditionally been performed by telegraphers. Carrier says that this work has never been considered work exclusively performable by telegraphers on this property and that for two generations it has been performed by employes both within and without the Telegraphers' Agreement. Petitioner states that the opening of the switch by the agent at Berwick was unquestionably "testing", since it indicated to the test board man at Scranton that it cleared the line under test. Carrier argues that the only "testing" that was done was between Scranton and Shickshinny, and that the opening of the switch at Berwick was a simple act no different from installing a light bulb or turning on a light switch. Petitioner cites a claim on this property in 1952 which resulted in the payment of a call to a telegrapher where testing and patching work had been done by a signal repairman alone. Carrier insists that the facts were different in that case and that in any event, it was an erroneous decision by Carrier and should not constitute a precedent.

The Board is thus confronted with the difficult question of determining whether the particular work performed in this case is reserved exclusively to

telegraphers under the Scope Rule. Of the various Awards cited by the parties, one, Award 3524, addresses itself specifically to the general kind of work involved in this claim. In that Award, in deciding whether testing and patching work at a particular office belonged to telegraphers, the Board said:

“ . . . The Carrier contends that testing, patching and balancing do not belong exclusively to the telegraphers. In this respect, we are of the opinion that testing, patching and balancing is work belonging exclusively to the telegraphers when it is incidental to and done in connection with the operation of lines, either telegraph or telephone, in performing work belonging to the telegraphers under their Agreement. On the other hand, such work is not that of the telegrapher when done by Telegraph and Signal Maintainers incidental to and in connection with the maintenance of lines. . . . ”

Under this statement, it would appear that the work performed in this case, if it was in fact “testing”, belonged to the telegrapher craft. The payment of the prior claim, although not necessarily conclusive on this case, is also an indication that “testing” has been regarded on the property as telegrapher’s work. It is difficult to determine whether or not this work was “testing” on the record before us because neither party has described either the equipment used or the procedure involved in testing in any detail. However, it appears that the work done here by the agent was necessary to and an integral part of the testing of the lines being accomplished by the wire chief. On the meager description of just what actually occurred in this case, we cannot conclude that the work was as simple in nature or as familiarly known to all employes as replacing a light bulb or turning on a light switch; the cases cited by Carrier in this connection are therefore not applicable or controlling.

We think, on the record as a whole, the disputed work was “testing” and that the claim for a call should be sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.