

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York, Chicago and St. Louis Railroad, that:

(a) The Carrier violated the agreement between the parties when it required or permitted an employe not covered by the agreement to perform communication service of record by the use of the telephone on March 26, 1953, at Findlay, Ohio.

(b) The Carrier shall now be required to compensate E. Tripplehorn, Telegrapher at Findlay, on the basis of one "call" for the work denied him account this violation.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties bearing effective date of June 1, 1948, together with supplements thereto, is in evidence; copies of which are on file with National Railroad Adjustment Board.

The communication work covered by the claim was a message transmitted from Findlay, Ohio, by signal maintainer R. H. McManigell, an employe not covered by the Telegraphers' Agreement, to South Lima, Ohio. An employe covered by the agreement, E. Tripplehorn, is employed at Findlay during the daytime hours but was not on duty at the time the communication was transmitted. During the hours of his assignment this employe performs all work in connection with transmitting and receiving communications of record or any work in lieu thereof.

In addition to the one employe covered by the agreement, the office force at Findlay includes a Supervisory Agent, not covered by the Agreement, two daytime clerks and one clerk employed at night.

South Lima, Ohio, is located approximately 33 rail miles west of Findlay. Telegraph service is maintained at South Lima twenty-four hours per day.

Claim was filed in behalf of Tripplehorn, the regularly assigned telegrapher on the basis of being available and entitled to the work performed by the signal maintainer. Carrier denied payment of the claim.

sage 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."

* * * * *

The Carrier desires to call the Board's attention to another aspect of this case. Rules for the Government of the Operating Department effective Sunday, December 5, 1943, under the general heading of "DUTIES OF SUBORDINATE OFFICERS AND EMPLOYEES" and under the specific heading of "OPERATORS" (Signalmen) includes on Page 185, the following provision:

"Day offices will not be closed for the night until 'G.N.' is given by the train dispatcher. Before leaving, a card will be placed on the window, which can be read from the outside, showing where the operator can be found."

There was no card in the window of the office at the time of the alleged violation. Although there was no necessity for calling E. Tripplehorn, and there was no violation of the Scope Rule or any other rule of the agreement, nor any departure from past practice and custom, the failure of E. Tripplehorn to place a card in the window and thus make himself available for call should in and of itself, terminate any further consideration of this claim in his behalf.

The Scope Rule of the agreement was not violated by the Carrier through the action of Maintainer McManigell as alleged. No other rule of the agreement was violated, and in fact, there is no rule, express or implied, that prohibits the Carrier or its maintainer from doing precisely what was done in this instance. The telephoning of Maintainer McManigell was no different from the established practice throughout the years on this Carrier. This telephone conversation cannot properly be held to have controlled transportation. The only message sent was by the operator at South Lima as a result of the telephone conversation, and there was no urgency in connection with it. The only actual reports of record were properly made out, and their handling is not the subject of the claim herein involved. In addition to the entire lack of merit from an agreement or rule standpoint, the claimant did not make himself available for call as he was required to do. The claim is without merit and should be denied.

All that is contained herein is either known or available to the Employees and their representatives.

(Exhibits not reproduced).

OPINION OF BOARD: The Claimant here, E. Tripplehorn, was the regularly assigned telegrapher at Findlay, Ohio, with hours from 7:00 A. M. to 4:00 P. M. He claims a call for March 26, 1953, because an alleged communication of record was transmitted from Findlay to the operator on duty at Lima, Ohio, for relay. The message was sent by telephone by a signal maintainer, and was addressed to the Superintendent at Muncie, the Chief Dispatcher at Muncie, the Signal Supervisor at Frankfort, and the Maintenance Foreman at South Lima. It read:

"Trains No. 65 and 1st 66 delayed Findlay account of defective circuit controller on east end of new track Findlay."

It is not denied by the Carrier that if Tripplehorn had been on duty this message would have been sent by him.

It is to be noted that before the signal maintainer telephoned this message to the operator at Lima for relay, he (the signal maintainer) had already notified his superior, the dispatcher at South Lima, that he had corrected the trouble. The claim is not based on this call, the Organization conceding that notification that he had completed a job was quite proper. What the Organization complains of is the subsequent message sent to various members of supervision concerning the delay of two trains. This was not a mere report to a supervisor of a job completed, as in some of the cases relied on by the Carrier, but was a report concerning the operation of trains which did not come within the province of a signal maintainer to communicate.

If Tripplehorn had been on duty the signal maintainer would no doubt have filed the message with him for transmittal. If it had been necessary or more convenient for the signal maintainer, Tripplehorn being on duty, to phone Tripplehorn a short distance in lieu of a personal trip to Tripplehorn's office, no doubt that would have been all right. But a distinction must be drawn between such a phone call to the proper person for the mere purpose of filing a message, and the use of the telegraph or telephone for the purpose not of filing a message for transmission but of actually transmitting the message itself. The fact that the message was to be relayed at South Lima, whether by phone or by telegraph, does not alter the fact that the communication had its initiation in Findlay where there was a telegrapher subject to call. The signal maintainer did not phone the operator at South Lima in lieu of making a personal trip to South Lima; he phoned him to avoid the necessity of calling Tripplehorn to transmit a message that it was the latter's job to transmit.

The Carrier contends that to sustain this claim would overthrow a forty-year practice. The evidence does not support this contention. The Organization cited a number of claims which had been paid on somewhat similar facts, and one claim that had been paid on identical facts.

Since we find that the message communicated by the signal maintainer was of that class, the communication of which is reserved to telegraphers under the Scope Rule, the claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1958.