

Award No. 8663
Docket No. TE-7889

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that:

1. Carrier violated and continues to violate the terms of the agreement between the parties when it required or permitted an employe not covered by the Telegraphers' Agreement to perform communications work at Herlong, California, at a time that the Agent-telegrapher is not on duty.

2. Carrier further violated the terms of the agreement when it deducted \$264.81 at the rate of \$33.11 each payroll period effective with the first payroll period, September, 1953, from the earnings of Agent-telegrapher W. K. Krecklow, Herlong, California.

3. In consequence of these violations the Carrier shall be required to refund Claimant Krecklow the amount of \$264.81, and shall pay one call on each date when a violation occurred starting on and after April 15, 1953 and continuing thereafter until the violation ceases.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the parties to this dispute bearing effective date of December 1, 1944 (reprinted March 1, 1951, including revisions). This agreement and all amendments thereto are included, by reference, in this claim.

This dispute involves claims for call payments in behalf of the Claimant, W. K. Krecklow, Agent-telegrapher, Herlong, California, because the Carrier, by unilateral action assigned the handling of communications at that station to an employe outside the coverage of the provisions of the Telegraphers' Agreement at a time that the Claimant was not on duty at his station. There is also involved in this dispute a claim that Carrier violated the agreement

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit of agreement support and requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves a twofold issue. It is alleged, first, that the Carrier violates the effective agreement when it requires or permits an employee who is not under the Telegraphers' Agreement to transmit messages of record. Secondly, it is contended that the Carrier violated the agreement when it reclaimed from Claimant \$264.81 as an alleged overpayment.

There is one telegrapher position at Herlong with regular hours 7:00 A.M. to 4:00 P.M. This position is classified as Agent-telegrapher. There is also employed at Herlong a freight clerk whose regular hours are 3:00 P.M. to 11:00 P.M. The basic issue in this case is whether or not the freight clerk, who is not under the Telegraphers' Agreement, was required or permitted to perform work which rightfully belonged to the Agent-telegrapher position.

It seems clear from the record that when the Agent-telegrapher is on duty he performs work of the sort here involved. Likewise, it appears that when there was a second telegrapher position, the incumbent of that position performed the communication work which the clerk now performs, which performance gives rise to the instant dispute.

The record contains samples of the messages transmitted by the clerk. They do not appear to be purely informational but are communications of record and have to do in part with the operations of trains. For example, some give car numbers with information as to the cargo and the character and destination of shipment.

The issue here is not the use of the telephone as such by the clerk, but rather the type and kind of communications made by him on the telephone. In view of the character of these communications we must find that the claim has merit.

Carrier raises the third party issue and contends that notice to the Clerks' Organization must be given in accordance with the provisions of Section 3, First (j) of the Railway Labor Act. We find in this case no genuine third party issue. There is no showing in the record that the clerks' position would be materially affected by a sustaining award. Hence this motion to give notice must be denied.

Since, on the main issue we have found that the claim has merit, there is no necessity for extended discussion of the matter of the deduction of \$264.81 from Claimant's pay. Since the basic claim is sustained, Claimant is entitled to be repaid the \$264.81 which was deducted from his earnings.

The conclusion reached herein is supported by numerous awards of the Division where communications of record affecting the operation of trains was involved.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1959.