Award No. 9241
Docket No. TE-8610

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago and Eastern Illinois Railroad, that:

CLAIM NO. 1

1. Carrier violated the terms of the Agreement between the parties when and because it required or permitted a train service employe with Extra 229 South on Saturday, March 13, 1954, at Grant Park, Illinois, to handle a line-up direct from the train dispatcher, and;

2. That Agent-Operator C. C. Caudle shall be compensated for a call in accordance with Rule No. 18 (Call) of the Agreement account Carrier's violative action by depriving from him the work to which he was entitled.

CLAIM NO. 2

1. Carrier violated the terms of the Agreement between the parties when and because it required or permitted Conductor Campbell with Extra 212 North to handle a line-up direct from the train dispatcher on Thursday, June 24, 1954, at Beecher, Ill.

2. Carrier shall now compensate Agent-Operator D. C. Myers for a call in accordance with provisions of Rule 18 (Call) for the work of which he was deprived by the Carrier's violative action.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the Chicago and Eastern Illinois Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employes. The Agreement was effective May 1, 1945, and has been amended. The Agreement as amended is on file with this division and is by reference included herein as though set out word for word.

or receiving messages, orders or **reports of record** by telephone **in lieu of the telegraph.** See Awards 4516, 4280 and 1983." Emphasis added.)

From the findings in the above Awards, as in many others, it will be observed that telephone work is not reserved exclusively to telegraph operators — that the only telephone work to which telegraphers may seriously lay claim is that work which is unquestionably made a matter of record. Such was not the case in the two claims at issue.

In conclusion, Carrier submits that this dispute does not arise as a result of a new or novel method of handling its business. The same operation has been performed over the entire system, without protest being submitted by the Telegrapher's Organization until the present time. What Petitioner is in fact now attempting to do in effect is to secure an order through this Division requiring Carrier to establish telegrapher positions at every point on its property where crews may be required to perform any work and in order to perform the work must on occasion secure further information or advice. Carrier believes it is not required to submit to such demands. There is nothing in the current Agreement, or elsewhere, requiring Carrier to establish telegrapher's positions at these points. There is no question but what custom and practice have properly secured for train service employes the right to communicate by telephone direct with the train dispatcher in regard to the movement of a train. This practice, when coupled with a Scope Rule as is in effect on this property, wherein the work encompassed is not spelled out by its terms, precludes any serious contention that the parties intended that this work would be reserved exclusively to telegraphers. The facts clearly support Carrier's position that what was done in these claims did not involve the handling of a train order, nor of line-ups — that the information did not become a matter of record, but consisted entirely of a casual telephone conversation between the dispatcher and a conductor solely for the purpose of handling a particular train movement in the most expeditious manner. While the employes have argued that the telephone conversations in question constituted communications of record it is pertinent that nowhere have they submitted any evidence to support this contention. Carrier asserts there is no merit to the claim whatsoever and only a denial award is in order.

Carrier affirmatively asserts that all data contained herein has been handled with the employes' representative.

(Exhibits not reproduced.)

OPINION OF BOARD: At Grant Park and Beecher Carrier operated on a double track main line. At Grant Park the industrial tracks were located on the east side of the double track and at Beecher on the west side. Consequently a south-bound train picking up or setting out cars at Grant Park must cross the northbound main to reach the industrial tracks and a northbound train picking up or setting out cars at Beecher must cross the southbound main.

On the first occasion here complained of the conductor of a southbound train set out a car at Grant Park and before blocking the main called the train dispatcher from a wayside telephone to tell him of the work to be done and obtained the probable arrival time of trains. On the second occasion a similar incident occurred at Beecher.

An agent-operator was employed at each station but was not on duty in either case when the dispatcher was called. Claim is made for a call on each occasion.

There was an agreement on the property that:

> "* * * there was no violation of the current ORT schedule when lineups are copied from either the operator at the individual's headquarters or from some other operator along the line. Copying lineups direct from the train dispatchers is a violation of the schedule."

The one issue here is whether the communications between the conductors and dispatcher were lineups. The purpose of these calls to the dispatcher was to learn the time of the arrival of trains in order to control their switching operations, which would block the main. We think these were nonetheless lineups though they were not made of record or actually copied down. The agreement may have been improvident but it seems to be plain so is not abrogated by nonobservance.

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

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Secretary

Dated at Chicago, Illinois, this 17th day of February, 1960.

DISSENT TO AWARD NO. 9241, DOCKET NO. TE-8610

Fundamental rules of contract construction were obviously ignored in making Award No. 9241.

Inasmuch as the term "line-ups" is not defined in the Agreement quoted in the Opinion, the conclusion that the conversations "were nonetheless lineups" obviously resulted from failure to give any consideration to the long practice shown by Carrier to have existed prior and subsequent to consummation of such Agreement in 1947.

Furthermore, the Agreement invalidated the claims because "copying line-ups direct from the train dispatchers" is the sole condition precedent to its application and admittedly nothing was recorded or actually copied down.

And in any event, calling employes to copy line-ups is not contemplated inasmuch as it is provided that no violation occurs when copied from some operator along the line.

For these and other reasons, we dissent.

/s/ J. F. Mullen

/s/ J. E. Kemp

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ C. P. Dugan