

Award No. 9573

Docket No. TE-9078

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
NORFOLK SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway that:

1. Article 1 and other rules of the Telegraphers' Agreement were violated when and because the Carrier permitted or required:

- a. The (Star) Agent at Norman, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message by commercial telephone on the date of August 8, 1955.
- b. The (Star) Agent at Middlesex, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message by commercial telephone on the date of September 6, 1955.
- c. The (Star) Agent at Middlesex, N. C., which position is classified as a non-telegraph, non-telephone agency, to receive (copy) one message and transmit another by commercial telephone on the date of October 12, 1955.
- d. The (Star) Agent at Bayboro, N. C., which position is classified as a non-telegraph, non-telephone agency, to receive (copy) one message and transmit another by commercial telephone on the date of August 8, 1955.
- e. The (Star) Agent at Middlesex, N. C., which position is classified as a non-telegraph, non-telephone agency, to receive (copy) a message by commercial telephone on the date of October 4, 1955.
- f. The (Star) Agent at Norman, N. C., which position is classified as a non-telegraph, non-telephone agency, to receive (copy) one message and transmit another by commercial telephone on the date of August 19, 1955.
- g. The (Star) Agent at Middlesex, N. C., which position is classified as a non-telegraph, non-telephone agency, to receive (copy) a message by commercial telephone on the date of November 2, 1955.

- h. The (Star) Agent at Middlesex, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message by commercial telephone on the date of November 7, 1955.
 - i. The (Star) Agent at Middlesex, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message by commercial telephone on the date of November 25, 1955.
 - j. The (Star) Agent at Stanfield, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message by telephone on the date of November 30, 1955.
 - k. The (Star) Agent at Walstonburg, N. C., which position is classified as a non-telegraph, non-telephone agency, receive (copy) one message and transmit another by commercial telephone on the date of December 5, 1955.
 - l. The (Star) Agent at Glendon, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message by telephone on the date of December 1, 1955.
2. The Carrier shall now be required to compensate a senior idle operator, extra in preference, a day's pay for each date at each point specified because of such violative action.

EMPLOYEES' STATEMENT OF FACTS: The basic agreement between the parties bears the effective date of August 1, 1937, with amendments from time to time thereafter. All references to the agreement will bear on rules or rates of pay currently effective unless otherwise noted.

Norman, North Carolina, is situated on the Carrier's Star-Candor-Ellerbe branch of its Western District, approximately 102 miles southwest of Raleigh, N. C.

Middlesex, N. C., is located on the main line 30 miles east of Raleigh.

Bayboro, N. C., is on a branch spurring off the main line at Marsden (100 miles east of Raleigh) and is 46 miles out from Marsden.

Stanfield, N. C., is on the main line 132 miles west of Raleigh, and 23 miles east of Charlotte, N. C.

Walstonburg, N. C., is also on the main line, 64 miles east of Raleigh.

Glendon, N. C., is on the main line, 61 miles west from Raleigh.

The August 1, 1937 Agreement, as of that date, provides in Article 32—Wage Scale, as follows:

"The minimum rate hereafter established for non-telegraph offices referred to in Section (b) of Article 2 of this agreement will be \$62.50 per month, except at Glendon, Pantego, Northwest and Hallison. The minimum rate applicable to telegraph positions hereafter established will be 58¢ per hour on branch lines and 59¢ per hour on the main line. It is understood that the main line constitutes the track from Norfolk, Va. to Charlotte, N. C., inclusive.

serted is without contractual basis or merit, is contrary to recognized, accepted and agreed-upon practice of many years, and that same should be denied, and urges your Board so hold.

OPINION OF BOARD: This claim arises on the same carrier and under the same Agreement as Award 9572, and is identical except that it involves messages sent or received by star agents of North Carolina stations during the last five months of 1955, ten by commercial telephone and two by carrier telephone, as follows: At Norman on August 8 and 19; at Middlesex on September 6, October 4 and 12, and November 2, 7, and 25; at Bayboro on October 4; at Stanfield on November 30; at Glendon on December 1; and at Walstonburg on December 5.

Those messages related to waybills, shipments, shortages, claims and payments, and did not involve train orders or movements.

There is no essential difference between this claim and Award 9572 and the same reasons govern both.

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

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 7th day of October, 1960.

DISSENT TO AWARDS 9572 AND 9573, DOCKET NOS. TE-8178 AND TE-9078

The reasoning by which the majority arrived at a decision to deny the claims in these two dockets appears to be faulty for several reasons.

First, there is an obvious failure to recognize the nature of the use to which the telephones were put. These were not merely conversations about matters that could have been handled by other means. The telephones were used by the agents to transmit and receive communications of types which are normally and regularly handled by telegraphers. They involved matters that would have required the use of the telegraph prior to the advent of the telephone if the same purpose were to be served.

This Board, and earlier tribunals, have long held that such work belongs exclusively to telegraphers. Examples of such holdings are to be found in various directives of the United States Railroad Administration at the time of World War I, such as Interpretation No. 4 to Supplement No. 13 to General Order No. 27, where it was specifically held that use of the telephone in lieu of telegraph for transmission of messages such as were involved here requires payment of the employes performing such work on the basis of classification as "telegrapher".

This concept has been carefully observed down through the years in many hundreds of decisions. Typical of these are Awards 4249, 4516 and 6419.

Clearly, it was with these facts in mind that the parties negotiated their agreements, both the general contract and the special Memorandum Agreement of May 20, 1937. In the latter, they specifically agreed that the wires would be removed from those locations where only employes paid a low rate for performance of non-telegraph work were to be maintained. Certainly there was no intent on the part of the Organization that such employes were to be required to perform communication work of a type recognized as belonging exclusively to the craft of telegraphers, a classification requiring a higher rate of pay than that agreed to for these non-telegraph employes.

Further, the reliance of the majority upon Article 13 of the general agreement appears to be based upon both a misconception of the purpose of such rules, and a highly strained interpretation of the word "regular".

Article 13 is merely a guide for adjustment in the rates of pay when certain changes in classifications are made. Paragraph (b) has no application to any of the facts we had before us. The arrangements contemplated by this paragraph were made long ago, when the wires were removed and the rates reduced. Paragraph (a) was not involved. There was no charge that "regular telegraph and/or telephone duties" were added to any position, and there was no claim for a rate increase. There was only a claim that on certain dates employes classified and paid as non-telegraph or non-telephone agents were required to perform the higher rated work of transmitting and receiving messages by means of telephones. The issue thus raised required application of the scope rule, as such rules historically have been applied, and the Memorandum Agreement of 1937, not Article 13.

Finally, the majority's discussion of the cliché about all telephone work not belonging exclusively to telegraphers is beside the point. It seems to me that when contracting parties agree that the wires will be removed at those places where only a non-telegraph or non-telephone employe is employed at a lower rate than that paid telegraph or telephone employes, they have agreed that the non-telephone employes will be used only in conformity with their classification: To perform non-telephone work.

These awards, therefore, have not shaken my conviction that when the Carrier required these non-telephone employes to perform telephone work at non-telephone rates of pay it violated the agreement.

For all of these reasons, I believe Awards 9572 and 9573 to be incorrect. The claims should have been sustained.

J. W. WHITEHOUSE
Labor Member.