

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Northern Pacific Railway, that:

1. Carrier violated agreement when, on May 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 31; June 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22 and 23, 1955, it caused, required or permitted a Section Foreman not covered by the Telegraphers' Agreement to handle (receive and copy) train lineups by the use of the telephone at Moscow, Idaho.

2. Carrier shall compensate B. F. Heaney, First Telegrapher, Moscow, for one call (2 hours at time and one-half rate) for each day of violation as above set forth.

3. That, in accordance with an agreement between the parties, this is a continuing claim and claimant or other employees entitled thereto shall be paid one call for each and every violation occurring subsequent to June 23, 1955, as may be determined by joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement entered into by and between Northern Pacific Railway Company hereinafter referred to as Carrier or Management and The Order of Railway Telegraphers hereinafter referred to as Employees or Telegraphers. The Agreement, as amended, is on file with this Board and is by reference made a part of this submission as though set out herein word for word.

This dispute was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. The dispute involves interpretation of the collective bargaining Agreement and is therefore under the provisions of the Railway Labor

2. By custom and practice various classes of employes communicate with telegraphers at adjacent stations by telephone for the purpose of securing information in connection with train movements.
3. By custom and practice telegraph service employes have not acquired the exclusive right to secure train line-ups for operators of track motor cars.
4. The Telegraphers' Agreement was not violated when the section foreman called the telegrapher at Pullman on May 2, 1955 for the purpose of securing a train line-up.
5. Notwithstanding the evidence in this docket, should this Division find that calling the telegrapher at Pullman on May 2, 1955 constituted the removal of work from the scope of the Telegraphers' Agreement, the measure of damages is the amount of work measured in terms of hours removed from the scope of the Telegraphers' Agreement computed at straight time rate.

This claim should completely denied.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employes, and is made a part of the particular question in dispute.

OPINION OF BOARD: The Claimant at the time this case was processed was employed as a telegrapher at Moscow, Idaho. The material facts in this case are not in dispute. On various days in May of 1955 a section foreman when reporting for duty in Moscow obtained and copied a lineup from a telegrapher in another city. His lineup was obtained at a time when Claimant was not on duty although available. There is no contention that an emergency situation existed.

This is a scope rule case involving the question of whether the copying of lineups is work reserved exclusively to telegraph service employes or not.

This problem has been before this Board many times and the opinions of the referees are in seemingly hopeless conflict; some deciding that the work is reserved exclusively to the telegraphers; others holding to the contrary. If this were a case of first impression involving this particular Carrier and its employes, this referee would be put in the position that so many other referees have found themselves whereby they had to decide which path to follow.

The fact is, however, that during the time this case was being processed here Referee Coffey decided Awards 7344 and 7345 sustaining the position of the employes. In the interest of creating stability rather than confusion this Board has consistently refused to overrule previous awards dealing with the same parties unless it was its determination that the awards were "palpably wrong".

This referee has thoroughly studied the dockets in the previous two cases and the docket in this case and he finds that the position of the Carrier is almost identical with the exception of one fact which will be aluded to later.

He has also studied Referee Coffey's awards and does not feel that the result arrived at by him was so palpably wrong that he should overrule them.

After Awards 7344 and 7345 were rendered by this Division Carrier pointed out that there was a distinction in the facts in this case with those in the above case. The distinction being that in those cases the lineup was obtained directly from the dispatcher while in this case the lineup was obtained from a telegrapher at another city. However, as this Board stated in Award 3881.

"The theory that agreement violation was avoided by relay through an adjacent telegrapher is not convincing. It was the receiving by the foreman and not the sending of which complaint was made. If it was a violation to receive from the dispatcher no reason is observable why receiving from an adjacent telegrapher was any the less a violation."

This being so, the violation arose from the copying of the lineup and has no relationship to the person transmitting it.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July, 1961.

DISSENT TO AWARD NUMBER 9998, DOCKET NUMBER TE-8689

In sustaining this claim Award 9998 disregards the rule of contract construction that when the Scope Rule is general in character and does not undertake to enumerate the functions embraced therein, claimants' right to the work which they contend belongs exclusively to them must be resolved from a consideration of tradition, historical practice and custom, and on that issue the burden of proof rests upon the employees. Instead, this Award adopts faulty opinions previously expressed in certain Awards which have