

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK AND WESTERN RAILWAY COMPANY

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

1. Carrier violated the agreement between the parties when on February 14, 1956 at Pulaski, Virginia and on May 14, 1956, at Abingdon, Virginia, it required or permitted employes not covered by the agreement to perform work belonging to employes under the agreement.

2. Carrier be required to compensate E. B. Fuller, Operator-Clerk at Pulaski, Virginia, for a minimum call on February 14, 1956, and E. S. Jackson, Operator-Clerk at Abingdon, Virginia, for a minimum call on May 14, 1956.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Pulaski, Virginia, and Abingdon, Virginia, are both stations on the Bristol District of the Radford Division of the Carrier. At the time cause for this claim arose, E. B. Fuller was regularly assigned to the position of Operator-Clerk at Pulaski (the only position under the Telegraphers' Agreement at that station), assigned hours 8:00 A. M. to 5:00 P. M., one hour for meal, and assigned rest days of Sundays and Mondays; E. S. Jackson was regularly assigned to the position of Operator-Clerk at Abingdon (the only position under the Telegraphers' Agreement at that station), assigned hours 7:00 A. M. to 4:00 P. M., one hour for meal, and assigned rest days of Sundays and Mondays.

On Tuesday, February 14, 1956, at about 9:22 P. M., while Operator Fuller was off duty, Ticket Clerk Kirby, at Pulaski, an employe not covered by the agreement, copied the following message from Bristol:

cerning passenger reservations. Certainly it cannot be said this is work belonging to the Telegraphers."

In support of its position, the Carrier also cites the following Third Division awards:

652	4791	5564	6778
653	4827	5619	6779
700	4879	5660	6788
752	4889	5702	6824
1708	4922	5777	6903
2679	5079	5866	6929
3003	5109	6007	6959
4464	5120	6159	6996
4512	5318	7031	4585
5404	6364	7066	4643
5416	6487	7076	4733
5468	6758	7153	7154

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Denial of the claims in the instant case is respectfully requested.

All material used in this submission was presented to or was known by the Employees while this claim was being progressed on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: At about 9:22 P. M. on February 14, 1956, the Ticket Clerk at Pulaski, Virginia, received the following telephone message from the Ticket Clerk at Bristol, Virginia:

"510 PM Bristol, Va. Feb. 14, 1956

"C. V. Jackson JN

"Double bedroom E car BN-1 train 42 tonight Pulaski-Baltimore JDT 41.

"C. W. Creger"

The regular Operator-Clerk, Fuller was off duty, having left the station at 5:00 P. M. Fuller's regular work schedule was from 8:00 A. M. to 5:00 P. M. Monday through Saturday.

At about 9:00 P. M. on May 14, 1956, the Ticket Clerk at Abingdon, Virginia, transmitted by telephone to the Operator at Glade Springs, Virginia:

"900 PM Abingdon, Va. 5/14/56

"Ticket Agent Sou Ry.
Washington DC

"Reserve roomette train 41 Washn to Abingdon 5/15 Name Mille
JAB 167

"W. R. Dixon"

The regular Operator-Clerk, Jackson was off duty at the time the message was transmitted, having left at 4:00 P. M. Jackson's regular work schedule was from 7:00 A. M. Tuesday through Saturday. The above message was transmitted on Jackson's rest day.

The Organization contends that the transmission and reception of these messages by telephone is reserved to telegraphers under the Scope Rule of the Agreement and under Supplement 13 both of which are fully set forth in the record. Fuller and Jackson were Operator-Clerks represented by the Organization while the Ticket Clerks at Pulaski and Abingdon, Virginia, were represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

A notice of the pendency of this claim was mailed to the Brotherhood on February 9, 1962, and on February 13, 1962, the latter replied disclaiming any interest in the dispute before the Board.

The Scope Rule is general in character. It does not specifically and clearly define the work which is specifically reserved to the telegraphers. The "Claimants right to the work which they contend belonged exclusively to them must be resolved from a consideration of tradition, historical practice and custom; and on that issue the burden of proof rests on the employees" Award 6824 (Wenke). Also see Awards 4464 (Wenke), 4791 (Robertson), 7076 (Whiting), 9953 (La Driere) and 9552 (Bernstein).

Both parties recognize this principle because the record is replete with evidence to show the historical practice and custom. The Organization cites dispute settlements to support its position (R 8-15). Most of these concerned orders to stop trains to take on revenue passengers. Only one such settled claim involved an order sell space on a train (R 13). In each settlement the Carrier wrote that the claim is allowed without prejudice.

The Carrier has filed 25 affidavits stating that "it has always been the general practice for employees not covered by the Telegraphers' Agreement to also handle messages by use of telephones." Each affiant concludes by stating:

"According to my personal knowledge the handling of messages of record, or not of record, by telephone has never been the exclusive work of telegraphers on Norfolk and Western Railway" (R 47 through 71).

If these affidavits are false or incorrect the Organization should have countered them by affirmative and pertinent evidence. Instead they say only that: "These affidavits represent nothing more than ready compliance with the boss's wish" (R 75). This is not sufficient to establish by a preponderance of evidence that by tradition, historical practice and custom the work belongs exclusively to the Telegraphers.

Furthermore, the Organization attempted in 1939 and in 1947 to enlarge the Scope Rule by covering conditions similar to the dispute now before the Board (R 24-29). Since these amendments were not adopted and the Scope Rule was not changed, the tradition, custom and practice heretofore established must remain. Award 7953 (Cluster).

The Organization argues that the real issue before this Board is whether the messages are "of record." In Award 1983 (Bakke) this Board said:

"It will be noted that the items of work became the property of the telegraphers under the scope rule that the items must be 'of record', which means that the conversations are important enough in the operation of the railroad to be made matters of record. The best example of this is in relation to transmission of train orders."

There is, however, no consistency in the Awards of this Board on what constitutes messages "of record." It will serve no useful purpose here to discuss and distinguish each of them. The facts and circumstances vary considerably in each case. In Award 9953 (La Driere) the Board held "that the fact that the substance of a telephone conversation is reduced to writing does not make it a communication of record."

The principle laid down by this Board in Award 6363 (McMahon) is applicable here. The Board said:

"The record shows ticket clerks held positions at Boulder and were members of the Clerks' Organization. Their duties, as designated by the position as 'Ticket Clerks', were primarily employed to sell tickets and perform other duties incidental to their work. They also were required to handle telephone communications concerning passenger reservations. Certainly it cannot be said this is work belonging to the Telegraphers."

Claimants have failed to establish by a preponderance of evidence that they are entitled to perform the work in question to the exclusion of others, either through custom, practice or tradition.

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 did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1962.