

Award No. 10492

Docket No. TE-8511

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Frank J. Dugan, 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 the provisions of the current agreement between the parties, when it permitted or required employes not coming within the scope of said agreement to perform the duties of handling communication service in the form of messages and reports of record at Gila Bend, Arizona; Corona and Carrizozo, New Mexico; and, Montello, Nevada.

2. These duties and the work involved shall be assigned to and performed by employes covered by said agreement.

3. The Carrier shall pay a "call" to each of the following employes on the dates listed:

John Logan, Gila Bend, Ariz., July 22 and August 7, 1953

S. A. Apgar, Carrizozo, N.M., March 15, 1955

C. R. Holmgren, Corona, N.M., March 15, 1955

L. A. Rawson, Montello, Nev., April 15, 1955.

EMPLOYEES' STATEMENT OF FACTS: An agreement effective December 1, 1944 (reprinted March 1, 1951, including revisions) is in effect between the parties hereinafter referred to as the Telegraphers' Agreement.

This dispute involves claims for call payments as provided in Rule 16 which requires a minimum payment of two (2) hours at overtime rate for two (2) hours work or less for service not continuous with the regular work period.

On July 22 and August 7, 1953 at Gila Bend, Arizona, the Carrier required or permitted a clerk in the Roadmaster's Office to copy communications of record in lieu of a telegrapher at that station on these dates. There is around the clock telegraph service at Gila Bend with telegraphers on duty to handle all communications service. Gila Bend is located on the Tucson Division.

three cases, i.e., petitioner's contention that the telephone conversations between section foremen and roadmaster's clerks constitute work reserved exclusively to employes coming within the scope of the current agreement. There is no basis whatever for such contention. This Board has held in numerous awards that the use of the telephone is not work reserved exclusively to telegraphers.

Furthermore, as shown in carrier's "Statement of Facts," the practice of section foremen conveying information of the nature here involved to roadmaster's clerks has been in effect during the entire life of the current agreement and for many years prior thereto, and that it was not until the year 1953 that petitioner formally contended that such practice violated the current agreement. This Board has repeatedly recognized such an established and uncontested practice as being of the same force and effect as written agreement provisions (see Awards Nos. 507, 522, 1257, 1397, 2040, 3604, 4020, 4086, 4160, 4240, 4354, 4493 and 5747).

Attention is also directed to the fact that the telephone conversations, upon which petitioner is basing this entire case, between section foremen and roadmaster's clerks involved duties incident to the positions of such employes. It is carrier's position that the current Telegraphers' Agreement is in no manner involved. Nevertheless, if petitioner through this submission is attempting to make a prima-facie case on violation of its agreement by the above duties performed by other employes as an incident to their positions, this Board is obligated to notify the other parties, and the carrier so urges. This Division cannot properly assume jurisdiction without notifying the other parties involved.

CONCLUSION

Carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and therefore requests, in the event the Board decides to assume jurisdiction, that said claim be denied.

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

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

OPINION OF BOARD: The issue here is whether the Carrier violated the Agreement when it permitted a clerk to copy a communication at Gila Bend when there is round-the-clock telegraph service at that station: when a section foreman at Corona phoned a message to a clerk at Carrizozo when a telegrapher could have been called: when a clerk copied a communication when the telegrapher was off duty at Montello, Nevada.

The scope rule in dispute here is general in nature. In such cases, numerous decisions of the Board have held that past practice is controlling. In Award No. 9329 this Board held:

"It is well settled that where, as in this Agreement, its scope is defined in terms of position rather than of work, its coverage with regard to any specific position is work traditionally and customarily performed by employees assigned to that position, as shown by past practice."

A review of the record shows that the Organization has not demonstrated that the work in dispute is exclusively theirs.

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 Agreement was not violated.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1962.