

Award No. 10527

Docket No. TE-9589

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**ATLANTA & WEST POINT RAIL ROAD —
WESTERN RAILWAY OF ALABAMA**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlanta and West Point Railroad and the Western Railway of Alabama, that:

Case No. 1.

1. Carrier violated the terms of the Agreement between the parties when on July 5, 6, 9, 10, 11, 13, 16, and 18, 1956, it required or permitted Conductor Pressley of Train No. 5, an employe not covered by the Telegraphers' Agreement, to receive and copy by use of an emergency phone at Cooks, Alabama, a switch list-lineup from the Agent at Boylston, Alabama.

2. Carrier shall compensate the senior idle employe, extra in preference, eight hours' pay for each of the enumerated dates in paragraph 1 that the aforesaid violation occurred.

Case No. 2.

1. Carrier violated the terms of the Agreement between the parties when on Saturday, July 7, 1956, it required or permitted Conductor Pressley of Train No. 5, an employe not covered by the Telegraphers' Agreement, to receive and copy by use of an emergency phone at Chehaw, Alabama, a switch list-lineup from the Agent at Boylston, Alabama after Agent-Telegrapher at Chehaw, Alabama had finished a three hour call and closed the station at 11:00 A. M.

2. Carrier shall now compensate W. L. Hammond for a call payment for July 7, 1956, and each succeeding day that the agreement was violated.

EMPLOYEES' STATEMENT OF FACTS: The violations that occurred in both Case No. 1 and in Case No. 2, while at different locations, were exactly similar in principle. The only distinction is in the proper compensation due for the violations. In Case No. 1, the violation occurred at Cooks, Alabama, where

been definitely decided in the two cases cited above. The issue in this case is identical to that in Awards 6487 and 6784. Carrier respectfully requests that this claim be denied, as there is no merit to it.

All data contained herein has been made available to Petitioner.

OPINION OF BOARD: It is quite apparent from a perusal of the Claim of the Petitioner that **Case No. 1** and **Case No. 2** are dissimilar:

Case No. 1 — The Conductor Pressley called the Agent at Boylston, Alabama, and received and copied by use of an emergency phone at Cooks, Alabama, "a switch list lineup", there being no Agent stationed or employed at Cooks, Alabama.

Case No. 2. — There was an Agent-Telegrapher stationed at Chehaw, Alabama, who had finished a three hour call at Chehaw and closed his station at 11:00 A. M.; after that time in violation of the Agreement the Carrier permitted Conductor Pressley to receive and copy by use of an emergency phone at Chehaw a "switch list lineup" from the Agent at Boylston, Alabama.

Article I of the Agreement effective September 1, 1949, provides, as follows:

**"ARTICLE NO. 1
EFFECTIVE DATE — SCOPE**

"Effective September 1, 1949, the following rules, regulations and rates of pay will apply to all Telegraphers, Telephone Operators (except switchboard operators), Agent Telegraphers, Agent Telephoners, Towermen, Levermen, Tower and Train Directors, Block Operators and Staffmen, also such Station Agents, Assistant Agents, Ticket Agents and Ticket Sellers as are listed herein."

This Board has repeatedly held, under this Scope Rule, that the use of the telephone is not reserved exclusively to telegraphers or any one particular bargaining unit. The description of the position being general in nature, it must be determined traditionally and historically by custom and practice what work is reserved to the Agent-Telegrapher.

In Award 6487 — (Rader) and Award 6784 — (Donaldson) it has been held by this Board that it has been the generally recognized standard practice for employes of train crews to copy train orders where Agents are not employed at a station or where the station does not exist. This conclusion having been soundly arrived at in these two Awards, it determine this Claim insofar as **Case No. 1** is concerned, and that part of the Claim should be denied.

Before considering **Case No. 2** on the merits, however, we must first dispose of the contention of the Carrier that Conductor Pressley made the call at Chehaw of his own volition and consequently the claim should not be allowed. This contention is disposed of by Award 1220 — (Tipton) and Award 2313 — (Rudolph) in which it has been held that the Carrier's business can only be performed by its agents and since they are performing work in the furtherance of their master's business, the Carrier is responsible for their acts.

The foregoing Claim was handled on the property in the usual and customary manner and when the Carrier denied the Claim there seemed to be no purpose in holding subsequent conferences.

We then come to a determination on the merits of Case No. 2. It will be readily observed by an examination of the Opinions in Awards 6487 and 6784, heretofore cited, that at none of the points at which a train order was copied was there a station where an Agent or Operator was employed and/or was available. It is specifically stated in Award 6784 in commenting on Award 6487 — "Claims were made because seven conductors had allegedly copied train orders, received at points where no telegrapher was employed". In the Claim set forth in Case No. 2, herein, an Agent-Telegrapher was employed at the station Chehaw where Conductor Pressley copied "Switch list lineups" from the Agent at Boylston after the Agent at Chehaw had closed the station. Although the facts here and in Award No. 6693 (Leiserson) are different, the principle enunciated is the same. When and where an Agent-Telegrapher is employed at a point or station, it is the duty reserved to such Agent-Telegrapher within the Scope Rule, to copy the train orders or "Switch list lineups" received at his station. This has been established in Award 6693 — the claim in Case No. 2 should be sustained.

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 Case No. 1 — Carrier did not violate the Agreement,

and, Case No. 2 — Carrier did violate the Agreement as charged.

AWARD

As to Case No. 1 — Claim denied,

As to Case No. 2 — Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1962.

CARRIER MEMBERS' DISSENT TO AWARD 10527, DOCKET TE-9589

We concur that Carrier did not violate the Agreement in Case No. 1, but not only for the reason set forth in the majority's opinion. The contract was not violated because "Switch Lists Lineups" as they have been loosely called in this case are not train orders nor anything even resembling a train

order. Furthermore, they are not "communications of record" as that term has frequently been used by the Board. See our Awards 10525, 10425, 9953 and 6363. They were nothing more than the personal memoranda of a Conductor for work which he was to perform at the next industry location on his local freight run. They had nothing whatsoever to do with governing and controlling the operation of trains. Therefore, the Claimants had no tenable grounds for claiming this work.

It follows, of course, that the majority erred in not denying the second case for the same reasons outlined above, regardless of the availability or non-availability of a Telegrapher. The type of work involved here is done quite frequently on many railroads and has never been considered Telegraphers' work. It is work which Conductors and Yard Foremen have performed as an incidental part of their regular duties since the inception of the telephone.

The majority was in grievous error in holding that "Switch List Lineups" are in the same category as train orders, therefore, the findings in the second portion of the award can only be treated as a nullity.

/s/ **W. F. Euker**
W. F. Euker

/s/ **R. E. Black**
R. E. Black

/s/ **R. A. DeRossett**
R. E. DeRossett

/s/ **G. L. Naylor**
G. L. Naylor

/s/ **O. B. Sayers**
O. B. Sayers