

Award No. 10763

Docket No. TE-8896

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Eugene Russell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY — WESTERN LINES**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway; that

1. The Carrier violated the Agreement between the parties when it required or permitted an employe not covered by the Telegraphers' Agreement to perform telegraphic communications work at Copeland, Kansas, on August 16, 1955, and at Springfield, Colorado, on August 17, 1955, and

2. The Carrier shall be required to pay the senior idle extra telegrapher on the seniority district a day's pay for August 16 and 17, 1955; or, if there be no such idle extra telegrapher the Carrier shall pay the senior regularly assigned employe under the Agreement on the seniority district idle on a rest day or rest days for the two dates named above a day's pay at the time and one-half rate of his position.

NOTE: A check of Carrier's records shall be made to determine the name of the individual entitled to the pay.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

On its Western Division, the Carrier maintains a branch line designated as the Cimarron Valley District, sometimes called the DC&CV District, running from Dodge City, Kansas, to Boise City, Oklahoma, a distance of 159.5 miles. Open stations are maintained at Ensign, Montezuma, Copeland, Sublett, Satanta, Moscow, Hugoton, Rolla and Elkhart, Kansas, and at Keyes and Boise City, Oklahoma. At Satanta around the clock telegraph service is maintained by three shifts of employes covered by the Telegraphers' Agreement; at Hugoton and Boise City the Carrier employs two telegraph service employes. All of the other stations on this line are one-man stations, at each of which an agent telegrapher is employed.

The instant dispute involved a matter that cannot, by any stretch of imagination, be considered as pertaining to the operation of trains. Moreover there was no necessity for making a record of any kind, and none was made, of the matters handled via telephone by Livestock Agent Waitman at Copeland, Kansas, and Springfield, Colorado, on August 16 and 17, 1955.

Since the advent and development of the telephone and subsequent expansion of its use on this Carrier's property, all classes of employes are required to and do use the telephone in the routine performance of their respective positions. Their use of the telephone does, of course, involve the transmitting and receiving of information, but if matters of record are of necessity handled by telephone by an employe other than a telegraph service employe, it is the Carrier's practice to confirm such matters of record by telegram. Telegraph service employes do not now and never have had the exclusive right to perform all telephonic service on this Carrier's property. It is obviously unreasonable for the representatives of the Telegraphers' Organization to contend, as they are in effect doing in this dispute, that all telephone work belongs exclusively to them. To literally comply with that contention would necessitate the employment of a telegraph service employe to work along side of and with every officer and employe of this Carrier who uses the telephone for any reason in the conduct of his duties. The impracticability and absurdity of such a situation should be sufficient to prompt an unqualified denial of the Organization's contention. This Board has many times recognized that the telephone is and has been used for many purposes independently of its use by telegraphers.

In conclusion the Carrier states that the instant dispute is not properly before this Board for the reason that the claimant employes are not identified in accordance with the requirements of Article V, Section 1(a), of the Non-Operating Employes Agreement of August 21, 1954 and should be dismissed for that reason. Moreover the Employes' claim in the instant dispute contemplates that they be given the exclusive right to perform all telephone service on the Carrier's property, a right they have never been able to secure through negotiation. The matters handled over the telephone by Livestock Agent Waitman on August 16 and 17, 1955 were not, by any stretch of imagination, matters of record and the employes represented by the Telegraphers' Organization have never had the exclusive right to handle such matters by telephone on this Carrier's property.

Carrier respectfully requests that the Employes' claim in the instant dispute be either dismissed or denied in its entirety, for the reasons herein expressed.

The Carrier is uninformed as to the arguments the Organization will advance in its ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in replying to the Organization's ex parte submission or any subsequent oral arguments or briefs placed by the Organization in this dispute.

All that is contained herein is either known or available to the Employes or their representatives.

OPINION OF BOARD: This dispute involves an alleged violation of the Agreement as herein above set forth.

Carrier's Livestock Agent, Mr. L. Waitman, with headquarters at Pueblo, Colorado, while at Copeland, Kansas on August 16, 1955 contacted all of the

agents on the Cimarron Valley District by telephone regarding bootlegger truck operators and again on August 17, 1955 from Springfield, Colorado, contacted all agents on the Manter District by telephone on the same subject.

Under the facts of this particular case as presented in this record your Board necessarily finds no violation of the Agreement for the following specific reasons:

(1) The communications did not relate to the operation of trains.

(2) The communications did not involve "matters of record", as that term has been interpreted by repeated awards of this Board.

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 August 1962.