

Award No. 10836

Docket No. TE-9965

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK SOUTHERN RAILWAY COMPANY

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

1. The Carrier violated Article 1 and other rules of the Telegraphers' Agreement when and because it permitted or required:

(a) The (star) agent at NORMAN, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message from Norman to Candor, N. C. by commercial telephone on the date of July 6, 1956.

(b) The section foreman at NORTHWEST, VA., an employe not covered by the agreement, to transmit a message from Northwest to Hertford, N. C. by use of the dispatcher's telephone on the date of July 25, 1956.

(c) The terminal trainmaster at WILSON YARD, N. C., an employe not covered by the agreement, to transmit a message from Wilson Yard to Norfolk, Va. by use of the dispatcher's telephone on the date of July 16, 1956.

(d) The section foreman at VANCEBORO, N. C., an employe not covered by the agreement, to transmit a message from Vanceboro to Raleigh, N. C. by use of the dispatcher's telephone on the date of July 17, 1956.

(e) The (star) agent at VANCEBORO, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message from Vanceboro to New Bern, N. C. by use of the dispatcher's telephone on the date of September 28, 1956.

(f) The (star) agent at GLENDON, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message from Glendon to Raleigh, N. C. by use of the dispatcher's telephone on the date of July 12, 1956.

(g) The (star) agent at GLENDON, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message from Glendon to Raleigh, N. C. by use of the dispatcher's telephone on the date of August 17, 1956.

(h) The (star) agent at GLENDON, N. C., which position is classified as a non-telegraph, non-telephone agency, to receive (copy) a message transmitted from Raleigh, N. C. to Glendon by use of the dispatcher's telephone on the date of August 20, 1956.

(i) The (star) agent at GLENDON, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message from Glendon to Raleigh, N. C. by use of the dispatcher's telephone on the date of August 22, 1956.

(j) The section foreman at PINETOWN, N. C., an employe not covered by the agreement, to transmit a message from Pinetown to Washington, N. C. by use of the dispatcher's telephone on the date of August 31, 1956.

(k) The section foreman at PINETOWN, N. C., an employe not covered by the agreement, to transmit a message from Pinetown to Washington, N. C. by use of the dispatcher's telephone on the date of September 10, 1956.

(l) The section foreman at McCULLERS, N. C., an employe not covered by the agreement, to transmit a message from McCullers to Raleigh, N. C. by use of the dispatcher's telephone on the date of August 27, 1956.

(m) The section foreman at McCULLERS, N. C., an employe not covered by the agreement, to transmit a message from McCullers to Raleigh, N. C. by use of the dispatcher's telephone on the date of October 15, 1956.

(n) The section foreman at McCULLERS, N. C., an employe not covered by the agreement, to transmit a message from McCullers to Raleigh, N. C. by use of the dispatcher's telephone on the date of November 9, 1956.

(o) The section foreman at McCULLERS, N. C., an employe not covered by the agreement, to transmit a message from McCullers to Raleigh, N. C. by use of the dispatcher's telephone on the date of December 5, 1956.

(p) The section foreman at McCULLERS, N. C., an employe not covered by the agreement, to transmit a message from McCullers to Raleigh, N. C. by use of the dispatcher's telephone on the date of December 7, 1956.

(q) The (star) agent at BAYBORO, N. C., which position is classified as a non-telegraph, non-telephone agency, to receive (copy) a message transmitted from New Bern, N. C. to Bayboro, and to transmit another from Bayboro to

New Bern, by use of a commercial telephone, both on the date of August 14, 1956.

(r) The (star) agent at BAYBORO, N. C., which position is classified as a non-telegraph, non-telephone agency, to receive (copy) a message transmitted from New Bern, N. C. to Bayboro and to transmit another from Bayboro to New Bern, by use of a commercial telephone, both on the date of September 14, 1956.

(s) The (star) agent at KNIGHTDALE, N. C., which position is classified as a non-telegraph, non-telephone agency, to transmit a message from Knightdale to Raleigh, N. C. by use of a commercial telephone on the date of October 9, 1956.

2. The Carrier shall now be required to compensate a senior idle operator, extra in preference, a day's pay for each date at each point specified because of such violative action.

EMPLOYES' STATEMENT OF FACTS: The basic agreement between the parties bears the effective date of August 1, 1937, with amendments from time to time thereafter. All references to the agreement will bear on rules or rates of pay currently effective unless otherwise noted.

Norman, North Carolina, is situated on the Carrier's Star-Candor-Elberbe branch of its Western District, approximately 333 miles south of Norfolk, Virginia.

Northwest, Virginia is situated 21 miles southward from Norfolk on Carrier's main line extending from Norfolk, Virginia to Charlotte, North Carolina.

Wilson, North Carolina is 183 miles southward from Norfolk, on the main line.

Vanceboro, North Carolina is located on the Marsden-New Bern branch, 15 miles from Marsden, North Carolina which is approximately 130 miles from Norfolk.

Glendon, North Carolina is on the main line, 292 miles from Norfolk.

Pinetown, North Carolina is also on the main line, 113 miles from Norfolk.

McCullers, North Carolina is another main line point, 242 miles from Norfolk.

Bayboro, North Carolina is on a branch line spurring off from the main line at Marsden, 45 miles distant therefrom.

Knightdale, North Carolina, also on the main line, 220 miles from Norfolk.

The August 1, 1937 Agreement, as of that date, provides in Article 32 — Wage Scale, as follows:

"The minimum rate hereafter established for non-telegraph offices referred to in Section (b) of Article 2 of this agreement will

OPINION OF BOARD: The claims in this docket deal with the use of the telephone on certain specified dates by Star Agents, Section Foremen and a Trainmaster for the purpose of transmitting and/or receiving messages or information. For the purpose of discussion, the claims will be grouped in three categories.

The first group of claims, i.e. (a)(e)(f)(g)(h)(i)(q)(r) and (s) deal with instances where Star Agents at five North Carolina towns; Norman, Vanceboro, Glendon, Bayboro and Knightdale used either the Company phone or commercial phone on specified dates to transmit and/or receive messages relating to shipping rates, tracing shipments, information on shipments which had been received and in one instance, a request to furnish cars. The claims in this group are substantially similar to those involved in Docket TE-8178. This is admitted by the Organization although it seeks to draw a distinction on the basis that in Docket TE-8178 the Carrier denied any violation whereas in this case it offered to settle these claims. The distinction is without merit. A rejected offer of settlement is not only not binding but under accepted principles is not even admissible evidence.

Docket TE-8178 was disposed of in Award 9572 by this Division by a holding that the use of the telephone by Star Agents in such situations did not violate the Agreement. It was followed by Award 9573 to the same effect. The principle is well established that in a dispute between the same parties involving the same issue and under the same Agreement, this Division will follow the prior award unless it believes it to be palpably erroneous. We are not prepared to say that Awards 9572 and 9573 are palpably wrong. Therefore they control the decision here and this first group of claims must be rejected.

The second group of claims, i.e. (b)(d)(j)(k)(l)(m)(n)(o) and (p) involve instances where Section Foremen at Northwest, Virginia, and Vanceboro, Pinetown and McCullers, North Carolina, on certain specified dates made telephone calls on the Company phone to Company employes at other stations concerning crossties and other materials received by the foremen and in one instance, a message was sent to the effect that the foreman's motor car had broken down. The Organization contends that the work involved comes within the scope of description used to denote work which is exclusively reserved to the telegraphers, and that this is traditional in the railroad industry. Significantly it does not assert that this has been the accepted practice on the present Carrier. In fact, this matter has long been a bone of contention.

The scope rule in question (Article 1) does not define or illustrate the work of telegraphers, and there is nothing in the Agreement which would prohibit section foremen from utilizing the telephone for the purposes involved in these claims. None of the calls concerned train orders or the movement of trains. Many Awards of this Division have held that telegraphers do not have the exclusive right to use telephones. Among these are: Awards 10059, 9961, 9953, 9343, 9572, and the recent Award 10825 in which one of the items of the claim involved the same type of situation we have here. In line with these awards, the Board holds that the messages involved in the second group of claims are not within the exclusive province of the telegraphers, and that the claims must therefore be denied.

The remaining claim (part C of the Statement of Claim) was a situation where the Terminal Trainmaster at Wilson Yard, North Carolina, used the Dispatcher's phone to call the Vice President for Operations and give him information about the freight car situation at Neverson Quarry. This call did not

concern the movement of trains. While the Organization asserts that Carrier by letter of April 25, 1939, recognized the right of telegraphers to perform all communications work at Wilson, this is not so since the letter dealt only with orders concerning the movement of trains. The assertion that Carrier has admitted this occurrence to be in violation of the Agreement is also not well taken. The language of the letter referred to was "while this might technically be violative of the Agreement". This is not an unqualified admission of a violation and is certainly not binding on the Carrier. This claim is substantially similar to those in Group 2 and in the judgment of the Board is governed by the same principles. It is therefore denied.

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 11th day of October 1962.