

**Award No. 11228**

**Docket No. TE-9591**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Phillip G. Sheridan, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**NORTHERN PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Northern Pacific Railway, that:

1. Carrier violated Agreement between the parties hereto when on July 14, 1956 (Saturday) it caused, required or permitted track supervisor Lechner to receive and copy (by use of telephone) at 12:50 P. M. train line-up No. 106 at Arlee, Montana.

2. Carrier violated Agreement between the parties hereto when on July 21, 1956 (Saturday) it caused, required or permitted section foreman Jeffries to receive and copy (by use of telephone) at 10:21 A. M., train line-up No. 107 at Evaro, Montana.

3. Carrier violated Agreement between the parties hereto when on July 21, 1956 (Saturday) it caused, required or permitted track supervisor Lechner to receive and copy (by use of telephone) at 2:07 P. M., train line-up No. 112 at Arlee, Montana.

4. Carrier violated Agreement between the parties hereto when on August 11, 1956 (Saturday) it caused, required or permitted track supervisor Craft to receive and copy (by use of telephone) at 1:43 P. M. train line-up 106 at Evaro, Montana.

5. Carrier violated Agreement between the parties hereto when on August 25, 1956 (Saturday) it caused, required or permitted track supervisor Lechner to receive and copy (by use of telephone) at 11:43 A. M. train line-up at Arlee, Montana.

6. Carrier violated Agreement between the parties hereto when on September 1, 1956 (Saturday) it caused, required or permitted track supervisor Lechner to receive and copy (by use of telephone) at 11:31 A. M. train line-up No. 106 at Schley, Montana.

7. Carrier violated Agreement when on September 8, 1956 (Saturday) it caused, required or permitted track supervisor Lechner to receive and copy (by use of telephone) at 11:54 A. M. train line-up No. 103 at Arlee, Montana.

8. Carrier violated Agreement between the parties hereto when on September 22, 1956 (Saturday) it caused, required or permitted track supervisor Lechner to receive and copy (by use of telephone) at 11:47 A. M. train line-up No. 104 at Arlee, Montana.

9. Carrier violated the Agreement between the parties hereto when on September 29, 1956 (Saturday) it caused, required or permitted track supervisor Lechner to receive and copy (by use of telephone) at 11:49 A. M. train line-up No. 105 at Arlee, Montana.

10. Carrier violated the Agreement between the parties hereto when on October 6, 1956 (Saturday) it caused, required or permitted track supervisor Lechner to receive and copy (by use of telephone) at 11:34 A. M. train line-up No. 104 at Arlee, Montana.

11. Carrier violated Agreement between the parties when on October 13, 1956 (Saturday) it caused, required or permitted track supervisor Lechner to receive and copy (by use of telephone) at 11:49 A. M. train line-up No. 104 at Arlee, Montana.

12. Carrier shall be required to pay C. H. Young, regular assigned agent-telegrapher, Arlee, Montana, who was ready, willing and available and entitled under the Agreement to perform such services, for one call (2 hours at time and one-half regular rate, agent-telegrapher position, Arlee, Montana) for each violation on July 14, 21, 21; August 11, 25; September 1, 8, 22, 29; October 6, 13, 1956, as set forth in paragraphs 1 to 11 inclusive.

(These claims were handled as eleven (11) separate claims on the property.)

**EMPLOYES' STATEMENT OF FACTS:** There is in full force and effect a collective bargaining Agreement between the Northern Pacific Railway Company, hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement is on file with this Division and is by reference made a part of this submission as though set forth herein word for word.

The dispute submitted herewith was handled on the property in the usual manner through the highest officer designated by Management to handle such disputes and failed of adjustment. The dispute is, under the provisions of the Railway Labor Act as amended, submitted to this Division for award.

The dispute submitted herein involves the same substantive claim and the same claimant as was involved in Award 7344 of this Division. The same Track Supervisor Lechner performed exactly the same work as was the subject of the dispute in the foregoing award. It is the position of Employees that the Board has determined the substantive claim and fixed the compensation to be allowed for the violation of the Agreement. It is the position of the Management that there is a distinction in these disputes and that submitted to this Division in Award 7344, but as Employees will hereinafter show, the attempted distinction by the Management is not valid.

Awards Nos. 1145, 1320, 1553, 3363, 4265, 4266, 4267, 5435, 5582, 5583, 5584, 5585, 6032, 6364 and 6788 of this Division.

## VI

Notwithstanding the evidence in this docket, is the claim of C. H. Young for payment of two hours at time and one-half rate for work not performed on the eleven dates in question tenable?

This Division in its awards has established the penalty for improperly removing work from the scope of an agreement as payment at pro rata rate for the amount of work lost measured in terms of hours. See Awards Nos. 6199, 6200 and 6214 of this Division. Therefore, a claim for payment at punitive rates for work which it is alleged to have been lost cannot be sustained.

To sustain the Employees' contention in this docket would be tantamount to directing that at an open station the telegrapher be called to come on duty for the purpose of telephoning the telegrapher employed at the adjacent station and secure information in connection with train movements and then relaying information received to the operator of the track motor car. At a blind siding, the Carrier would be required to employ a telegrapher. The only function that the telegrapher at an open station or at a blind siding would perform would be to telephone the telegrapher employed at the adjacent station and relay the information received to the operator of the track motor car. The rules of the Telegraphers' Agreement never contemplated an operation as unrealistic as would flow from an award sustaining the claim of Mr. Young.

The Carrier has shown that the operator of the track motor car did not usurp work included within the scope of the Telegraphers' Agreement when he secured a train line-up over the telephone from a telegrapher employed and on duty at an adjacent station while working either at Arlee or Schley; that traditionally, operators of track motor cars have always secured train line-ups from telegraphers employed at adjacent stations when working at a station where a telegrapher was employed but not on duty or when working at a blind siding; and that this traditional practice has not been abrogated or modified by the Telegraphers' Agreement effective April 1, 1956. The Carrier has also shown that the penalty for time lost is payment at pro rata rate rather than at punitive rate. Accordingly, this claim should be denied in its entirety.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employees, and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This case involves eleven (11) claims, and this Agreement has been subject to interpretation in four awards of this Board. See Awards 7344 (Coffey), 7345 (Coffey), 9998 (Webster), and 10835 (Ray).

In Award 7344, the same Claimant was involved over a dispute created by the same alleged violator in this case.

The facts upon which this case is based are similar to those in the former awards originating on the same property, except that in Claim

No. 6, the track inspector called from a blind siding the operator at Paradise, Montana for a line-up.

The Claimant on the days in question was on his assigned rest day but available for a call. He was the nearest operator.

In Award No. 7344, the Referee Coffey held that line-ups are communications of record on that property.

Referee Webster in Award 9998, held that it was the receiving of the message which created the violation and not the sending.

Award 10835 concurs with Award 9998.

The issues being substantially the same and the property being the same, and in order to preserve stability of decisions on this Board, we find the Agreement was violated.

**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 violated.

#### AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1963.