

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
NORFOLK AND WESTERN RAILWAY COMPANY**

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

1. Carrier violated the Agreement between the parties when, on December 26, 1958, it required or permitted Signal Supervisor A. A. Kercher at Bluefield, West Virginia and Station Clerk Ellis at St. Paul, Virginia, to transmit and receive a message.

2. Carrier shall be required to compensate Extra Telegraphers E. E. Ringstaff and G. T. Kennedy each in the amount of a day's pay (8 hours) at the minimum telegraphers' rate on the Pocahontas Division.

EMPLOYES' STATEMENT OF FACTS: The Agreements between the parties are available to your Board and by this reference are made a part hereof.

Bluefield, West Virginia is the division headquarters of the Pocahontas Division. In the division offices building at Bluefield, this Carrier maintains a telegraph office providing continuous service around-the-clock.

St. Paul, Virginia is a station about 80 miles west of Bluefield. In the combined freight-passenger station at this point, this Carrier maintains a telegraph office providing continuous service around-the-clock.

On December 26, 1958 at 2:53 P.M., A. A. Kercher, Signal Supervisor, from his office in the division offices building at Bluefield, one floor above the telegraph office, transmitted the following message to Station Clerk Ellis Barker at St. Paul in his office adjacent to the telegraph office:

"Bluefield, Dec. 26, 1958

K. M. Lemon - St. Paul, Va.

Power will be off Ramsey to Norton, Monday and Tuesday, December 29 and 30 account line work. Protect switch situation at Norton.

/s/ A. A. Kercher"

4464	5079	5702	6779	7153	8207
4512	5109	5777	6788	7154	8208
4585	5120	5866	6824	7401	

The Carrier desires to respectfully point out that the jurisdiction of the Third Division, National Railroad Adjustment Board, is limited to the matter of interpretation or application of agreements and that such Division has no jurisdiction whatsoever to write any agreement or to read any non-existent rule into an agreement, which it would be doing if it sustained the instant claim.

It is the position of the Carrier that Telegraphers did not have exclusive rights to the work involved in the instant case, that is, the use of a telephone by a Supervisor of Signals at Bluefield, West Virginia, and by a clerk at St. Paul, Virginia, on December 26, 1958, by which the Supervisor of Signals requested the clerk to inform the signal maintainer with headquarters at St. Paul that electric current would be off the power lines between certain points on his territory on December 29 and 30, and for him to protect power switches, and that such telephone communication was not a violation of the Telegraphers' Agreement.

The Carrier's position as set forth in this submission clearly proves there is no merit whatever to the Employees' claim in this case.

Denial of the claim in its entirety is respectfully requested.

(Exhibits not reproduced.)

OPINION OF BOARD: On December 26, 1958, the date involved in this claim, three telegraphers were assigned around the clock at the St. Paul, Virginia, station. The Supervisor of Signals, A. A. Kercher, at Bluefield, Virginia, tried to reach Signal Maintainer, K. M. Lemon, at St. Paul by telephone. Mr. Lemon was not at the station at the time and Kercher asked the clerk, who answered the telephone at St. Paul, to contact Lemon and advise him "that on Monday and Tuesday, December 29 and 30, power would be off from Ramsey to and including Norton Yard and to protect power switch situation at Norton." The clerk telephoned Mr. Lemon's home and, in the absence of Mr. Lemon, gave this message to a member of Mr. Lemon's family.

Petitioner contends that the Signal Supervisor transmitted the following message to the Clerk at St. Paul.

"Bluefield, Dec. 26, 1958

K. M. Lemon - St. Paul, Va.

Power will be off Ramsey to Norton, Monday and Tuesday, December 29 and 30 account line work. Protect switch situation at Norton.

A. A. Kercher"

This, Petitioner alleges, "constituted the performance of telegraph service by a signal supervisor at Bluefield and by a station clerk at St. Paul, neither of which holds seniority under the Telegraphers' Agreement." Claimants ask that each be paid eight hours at the minimum telegraphers' rate on the Pocahontas Division.

Carrier denies that such a written message was ever sent.

The telephone message had nothing directly to do with the immediate direction of train operations or the safety of persons and property. It is true

that the signal system involves train movements and certainly affects the safety of persons and property. But the telephone message from the Signal Supervisor to the Signal Maintainer is not such a message which was immediately concerned with the movement of trains or the safety of persons and property. There was no immediate emergency which affected train movement. Power was not to be shut off until three days after the telephone call. There was ample time to make necessary arrangements for the movement of trains on December 29 and 30 between the two points involved.

On the basis of Awards of this Board, involving the same parties and the same Agreement, Petitioner is required to show that the transmission of the telephone message as it appears in the record was historically and traditionally reserved to telegraphers. This, Petitioner has failed to do. On the contrary, the record shows that supervisors historically and customarily transmitted such telephone messages.

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.