

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Michael J. Stack, Jr., Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORP.

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware & Hudson Railroad, that:

(1) Carrier violated agreement between the parties hereto when on September 12, 1956, it required or permitted K. W. White, a Clerk at North Creek, to copy a message for "SC-5," containing a line-up of work to be performed at Warrensburg.

(2) Carrier shall compensate J. M. Parkis, Agent-Telegrapher, North Creek, for one call as provided in Article 3(d) of the agreement in the amount of \$6.89.

EMPLOYEES' STATEMENT OF FACTS: At all times hereinafter set forth there was in full force and effect collective bargaining agreement entered into by and between The Delaware and Hudson Railroad Corporation, hereinafter called Carrier or Management, and The Order of Railroad Telegraphers, hereinafter called Employees or Telegraphers. The Agreement is, by reference, made a part of this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by Carrier and failed of adjustment. Under the provisions of Railway Labor Act, as amended, this Division has jurisdiction of the parties and subject matter.

The dispute involved the performance of work of "telephone operator," by an employe not covered by the Telegraphers' Agreement, at North Creek, New York.

At North Creek there is one position covered by Telegraphers' Agreement. The classification agreed to by the parties (Rule 26, Page 19 Agreement) was Agent-telegrapher. The other position Telegrapher and Clerk, shown for North Creek, has been abolished.

J. M. Parkis, an employe holding seniority (Rule 10) under the Telegraphers' Agreement, is the owner of the position of Agent-telegrapher. He

OPINION OF BOARD: After the regularly assigned telegrapher had gone home did the telephonic receipt of the message set forth below, recording of the same by a clerk in response to the calling train dispatchers directions and the subsequent delivery of the same to the conductor specified therein breach the Telegraphers' Agreement?

We hold that it did.

The message was:

"Conductor SC 5 at North Creek

September 12, 1956

Warrensburg work. From Mill— Sou 39676 empty to Saratoga, bring B&M 77582 from Hill to Heel, PRR 772973 next behind, Sou 31462 next behind, leave PRR 26572 at door 3, place NYC 168179 at door 1 for loading, leave all other cars on Hill.

/s/ G.R.M."

This message, originating with the train dispatcher in Albany, arrived by telephone at North Creek after the regularly assigned telegrapher had finished his tour of duty and left the office. It was received by a clerk who, as instructed, copied and delivered it.

We deem the following facts to be significant. A record was made. The content of the message related to the movement of a train. The recipient was directed to make a record and it included references to six cars. A telegrapher was assigned at this location. Had he been present and all other facts remained the same, a different result might have obtained.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February 1964.

**CARRIER MEMBERS' DISSENT TO AWARD 12172,
DOCKET TE-9892**

In Award 12172, the majority stated, in part, as follows:

" * * * We deem the following facts to be significant. A record was made. The content of the message related to the movement of a train. The recipient was directed to make a record and it included references to six cars. A telegrapher was assigned at this location. Had he been present and all other facts remained the same, a different result might have been obtained."

The majority's decision is not only palpably wrong, but is obviously the result of disregarding the facts in the first instance, and then disregarding an award on this same property in the second instance. See our Award 9343.

The instructions to the crew concerning the work to be performed at Warrensburg was not a "communication of record" as that term has frequently been used by this Board. See our Awards 10525, 10425, 9953 and 6363, among others. It had nothing whatsoever to do with governing and controlling "the movement of a train."

It is work that clerks, train and engine crews and other employes outside the scope of the Telegraphers' Agreement have performed as an incidental part of their regular duties since the inception of the telephone.

In Award 9343, involving the instant parties to this dispute, i.e., ORT v. D&H, we held in part:

" * * * As to Claim 2 wherein the employes state that when train service employes, not covered by the Telegraphers' Agreement, transmit by the use of the telephone, reports of trains, consists of trains, arrival and departure times of trains at various points, to the train dispatcher, from Castleton, Vermont, they violate the Telegraphers' Agreement Scope Rule. The employes admit that the Scope Rule does not specifically designate what work is covered, but that it is clear that the sending and receiving of communications of record belong under the Scope Rule.

The Scope Rule of the Agreement does not give to the telegraphers the exclusive right to use a telephone, nor does it give to the telegraphers the exclusive right to perform the work as outlined in Claim 2, nor does any other rule of the Agreement give to this claimant the exclusive right to perform this work. On the other hand, the Carrier has shown that it has been past practice to have train service employes perform this work that the claimants contend is theirs exclusively. Therefore, Claim 2 will be denied. That part of Claim 4 that relates to compensation for the alleged violation of the Agreement, set forth in Claim 2 will be denied. * * *"

Therefore, the majority's decision is so completely lacking in reasoning and logic as to make it a nullity. It should forever be so treated.

R. E. Black
R. A. DeRossett
W. F. Euker
G. L. Naylor
W. M. Roberts