

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of Railroad Telegraphers on the Southern Pacific (Pacific Lines), that:

CLAIM NO. 1

1. The Carrier violated the Agreement between the parties hereto when on October 26, 1959, it permitted or required Extra Gang Foreman Roger Rio, while working between MP 288.5 and MP 289.9, to transmit a message over the telephone; and when it permitted or required a train dispatcher at Ogden, Utah, to receive said message over the telephone, neither employee being covered by the Telegraphers' Agreement.

2. The Carrier shall, because of the violation set out in Item 1 of this Statement of Claim, compensate M. K. Segar, 3rd Telegrapher-PMO, Sparks, Nevada, for one special call.

CLAIM NO. 2

1. The Carrier violates the parties' Agreement at Phoenix Yard Office, Phoenix, Arizona, and at Tucson, Arizona, when, commencing October 8, 1959, and daily thereafter, it requires employees not covered by the Telegraphers' Agreement to transmit and/or receive messages over the telephone.

2. The Carrier shall, because of the violation set out in Item 1 of this Statement of Claim, compensate:

(a) M. J. Barringer and/or his successor, 3rd Telegrapher-Clerk, Phoenix Yard Office, Phoenix, Arizona, for one special call for each date October 8-12-13-14-15-19-20 and 21, 1959.

(b) P. B. Forman and/or his successor, 3rd Wire Chief 'UN' Tucson, Arizona, for one special call each date October 8-12-13-14-15-19-20 and 21, 1959.

(c) J. R. Knoll, Relief Telegrapher-Clerk-Agent, Phoenix Yard and Tempe, Arizona, for one special call for each date October 9 and 16, 1959.

(d) G. V. Fimbres and/or his successor, Relief Wire Chief 'UN' Tucson, Arizona, one special call for each date October 9 and 16, 1959.

3. The Carrier shall, in addition to the foregoing, for each date subsequent to those set out in (a) through (d) above, in accordance with the substantive claim, on which similar violations occur, compensate an available telegrapher at the respective stations named in this Statement of Claim, in accordance with applicable rules.

CLAIM NO. 3

1. The Carrier violated the Agreement between the parties hereto when on April 8, 1960, at or about 2:35 A.M. it required or permitted Roundhouse Foreman Detwiler at Frink, California, to transmit a message over the telephone to the train dispatcher.

2. The Carrier shall, because of the violation set out in Item No. 1 of this Statement of Claim, compensate Extra Telegrapher R. O. Jones, Indio, California, for a day's pay (8 hours) at the pro rata rate of the third shift telegrapher's position at Indio.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective December 1, 1944, reprinted March 1, 1951, and as otherwise amended.

CLAIM NO. 1

At pages 50 and 51 of said Agreement are listed the positions existing at Sparks, Nevada, on the effective date of said Agreement. The listing reads:

Location	Title of Position	Hourly Rate of Pay
Sparks	Agent	\$2.04
Sparks	Manager-1st Wire Chief	1.92
Sparks	2nd Wire Chief-Telegrapher	1.86
Sparks	3rd Wire Chief-Telegrapher	1.86
Sparks	1st Telegrapher-Clerk-PMO	1.77
Sparks	2nd Telegrapher-Clerk-PMO	1.77
Sparks	3rd Telegrapher-Clerk-PMO	1.77
Sparks	Telegrapher-Clerk	1.77
Sparks	Printer Machine Operator-Clerk	1.77
Sparks	Printer Machine Operator-Clerk	1.77
Sparks	Printer Machine Operator-Clerk	1.77
Sparks	Printer Machine Operator-Clerk	1.77

The telephone conversations subject of this claim were in keeping with long-standing practice on the property before and after the effective date of the current agreement. Not only is that practice entirely proper, but Petitioner has never produced one shred of evidence as to any agreement having been entered into by this Carrier allocating the duties in dispute to employees represented by Petitioner.

Insofar as the claim for overtime rate is concerned, if there were any basis for claim submitted, which Carrier denies, nevertheless the contractual right to perform work is not the equivalent of work performed. That principle is well established by a long line of awards of this Division, some of the latest being 6750 (this property), 6873, 6875, 6974, 6978, 6998, 7030, 7062, 7094, 7100, 7105, 7110, 7138, 7222, 7239, 7242, 7288, 7293 and 7316.

CONCLUSION

Carrier has conclusively shown herein the claim is unwarranted and totally lacking in merit, and if not dismissed for lack of proper notice to other interested parties, Carrier asks that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Three claims are to be considered.

CLAIM NO. 1

On October 25, 1959, a train dispatcher, on information furnished by a foreman of a maintenance gang, issued the following train order No. 360, addressed to Eastward trains via Dodge at Fernley, Nevada:

"DO NOT EXCEED 20 MPH BETWEEN MP 288.5 and MP 289.5"

The next day the maintenance gang foreman telephoned the following message to the train dispatcher at Ogden, Utah:

"Cancel slow order between Mile Posts 288.5 and 289.5."

On the basis of this telephone conversation, the train dispatcher at Ogden issued the following train order to the telegrapher at Fernley:

"ORDER NO 360 IS ANNULLED"

The claim is based upon the telephone conversation between the Maintenance of Way foreman and the dispatcher. It is the position of Petitioner that the "work performed by Mr. Rio, Foreman of Extra Gang, on the date involved, resulted in the issuance of a train order the movement of a train. . . ." This conversation is not a train order; no record appears to have been made by either party. The train order was sent by the dispatcher after his conversation with the Maintenance of Way foreman. Awards 5792 and 8663, cited by Petitioner, are not applicable.

CLAIM NO. 2

On September 21, 1959, Carrier's Superintendent instructed certain employees at Phoenix and Tucson to telephone his Secretary each day and report the clerical yard engine employees, and herders, punitive overtime

worked the previous day and reasons, giving job title, rate of pay and amount of overtime. They were also instructed to call his Secretary each day and report the number of yard engines, yard engine days worked the previous day and number of cars handled. Commencing on October 8, 1959, such information was telephoned daily to the Superintendent's Secretary, as directed.

In a letter dated January 19, 1960, Carrier's Superintendent wrote to Petitioner's Local Chairman, in part, as follows:

"In order for me to be cognizant of the daily operations performed on the railroad under my jurisdiction, it is necessary that I be informed currently of yard operations and overtime performed in conjunction therewith.

Instructions were issued per my A-212 and A-213 of September 21st, 1959, so that necessary information for that date could be readily available if needed.

As the telephone information received is not considered a message of record, your request that certain telegraphers be allowed additional compensation October 8, 1959, and certain subsequent dates is not supported by agreement provisions and is accordingly denied."

The reports received by the Superintendent's Secretary were informational. They were not communications of record; they were not train orders; they did not involve the movement of trains or the safety of passengers and property.

There is no probative evidence in the record that this type of telephone conversation is work which belongs exclusively to employees covered by the Telegraphers' Agreement.

CLAIM NO. 3

On April 8, 1960, the Roundhouse Foreman, on line at Frink, California, had the following telephone conversation with the dispatcher at Los Angeles:

"Dispatcher Frink — This is the dispatcher

This is Detwiler at Frink PFE 42421 is rewheeled and ready to go.

Dispatcher — Is that a load?

Detwiler — Yes they sent us down here account that car was a load.

Dispatcher — OK where are you going now?

Detwiler — We are going to Indio

Dispatcher — OK"

This is not a communication of record; it is not concerned with the movement of trains or the safety of passengers and property. See Award 9318 on the same property.

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

Carrier did not violate the Agreement.

AWARD

Claims 1, 2 and 3 are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of June 1964.