

Award No. 12620
Docket No. TE-13095

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 The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines), that:

CLAIM NO. 1

1. The Carrier violated the terms of an Agreement between the parties hereto when on June 27, July 6, 7, 9 and 15, 1960, it required or permitted a train crew dispatcher at Los Angeles Yard, Los Angeles, California, an employe not covered by the parties' Agreement, to transmit messages of record over the telephone to the agent at Pomona (as corrected), California.

2. The Carrier shall, because of the violations set out in Part 1 of this Statement of Claim, compensate the following claimants as hereinafter set forth:

(a) H. H. Jenkins, first telegrapher-clerk, Los Angeles Yard, Los Angeles, California, for one (1) special call for June 27, 1960.

(b) E. H. Leroy, third telegrapher-clerk-PMO, Los Angeles Yard, Los Angeles, California, for one (1) special call for each date July 6 and 7, 1960.

(c) M. E. Kuetick, second telegrapher-clerk-PMO, Los Angeles Yard, Los Angeles, California, for one (1) special call for each date July 6, 9 and 15, 1960.

CLAIM NO. 2

1. The Carrier violated the terms of an Agreement between the parties hereto when on May 10, 1960, it required or permitted Ticket Clerk Irma Johnson at Redding, and an Assistant Chief Train Dispatcher at Dunsmuir, neither of whom are covered by the parties' Agreement, the former to transmit and the latter to receive messages of record over the telephone.

2. The Carrier shall, because of the violation set out in Part 1 of this Statement of Claim, compensate W. L. Grimm, first telegrapher Redding, and R. Bell, first telegrapher-clerk-PMO Dunsmuir, one special call each.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective December 1, 1944, reprinted March 1, 1959, and as otherwise amended.

The offices and positions involved or related to the respective claims are shown in the following, as listed in the parties' Agreement on the effective date thereof, with page number of the Agreement specified:

Re: Claim No. 1

Page	Location	Title of Position	Hourly Rate of Pay
66	Los Angeles Yard	1st Telegrapher-Clerk-PMO	\$1.71
66	Los Angeles Yard	2nd Telegrapher-Clerk-PMO	1.71
66	Los Angeles Yard	3rd Telegrapher-Clerk-PMO	1.71

Re: Claim No. 2

48	Dunsmuir Yard	1st Telegrapher-Clerk-PMO	1.68
49	Redding	1st Telegrapher-Clerk-Towerman	1.685

On the dates set forth in the substantive claim, employees not covered by the Telegraphers' Agreement at the various station locations listed above, transmitted and/or received messages of record over the telephone.

On the ground that the performance of this class of telephone communication work by employees outside the Telegraphers' Agreement constituted a violation thereof, District Chairman R. E. Crista, by two letters dated August 5, 1960, and a third dated August 6, 1960, instituted the claim which is the subject matter of the appeal in Claim No. 1.

Included in the District Chairman's letters instituting this claim are sample messages furnishing the necessary material evidence in support of the charge made by him. Copies of the District Chairman's letters are attached hereto as ORT Exhibits 1, 4 and 7 of Claim No. 1.

Copies of Superintendent Long's reply to each claim filed, in which he denied payment in each instance, is correspondingly attached hereto as ORT Exhibits 2, 5 and 8 of Claim No. 1. The District Chairman responded thereto with a letter in each claim case, to Superintendent Long wherein he rejected Mr. Long's decision; and said letters are also in proper order attached hereto as ORT Exhibits 3, 6 and 9 of Claim No. 1.

It is shown in our ORT Exhibit 10 — Claim No. 1, that General Chairman Smith filed an appeal on September 9, 1960, with Mr. L. W. Sloan, Assistant Manager of Personnel; and copy of Mr. Sloan's letter confirming that conference was held and that payment was denied, is shown in ORT Exhibit 11 — Claim No. 1.

the latest being 6750 (on 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: Two claims are involved in this dispute.

CLAIM NO. 1

Petitioner alleges that the following telephone conversations were communications of record:

"LOS ANGELES—JULY 6, 1960
AGENT—POMONA

FIREMAN MCFATRIDGE 2:45 P.M. JOB IS RELIEVED
AFTER TOUR OF DUTY DATE ACCOUNT CUT OFF EXTRA
BOARD.

ENGINE CREW DISPR—3:50 P.M."

"LOS ANGELES—JULY 9, 1960
AGENT—POMONA

G. M. BRIDGHTWELL HAS REPORTED FOR JOB 335 AND
WILL PROTECT JULY 9TH 8 P.M. THIS RELEASES W. W.
DINGER AT END OF TOUR OF DUTY.

ENGINE CREW DISPR 2 A.M."

"LOS ANGELES—JULY 15, 1960
AGENT—POMONA

BRAKEMAN D. C. WISER ON JOB 922 CALL TRAIN CREW
DISPR.

TRAIN CREW DISPR.—8:14 A.M."

These messages deal with personnel assignments, seniority and displacements. They are not communications concerned with the movement of trains or the safety of passengers and property. They are not messages of record. Since Petitioner has failed to submit probative evidence that this kind of telephone conversations is work which belongs exclusively to employees covered in the Telegraphers' Agreement, the claim must be denied.

CLAIM NO. 2

At 11:50 A.M. on May 10, 1960, the Assistant Train Dispatcher at Dunsmuir, California, issued the following instructions to the Agents at Redding and Cottonwood:

"38 children and 3 adults will board No. 19 at Redding May 11th for Cottonwood. No. 19 stop at Cottonwood to detrain. Train crew assist all possible."

At approximately 7:00 P. M. on the same day, the Ticket Clerk at Redding called the Assistant Train Dispatcher on the telephone and advised him as follows:

"Instead of 38 children and 3 adults boarding No. 19 at Redding May 11th for Cottonwood, it will now be 34 children and 3 adults boarding No. 19 at Redding Thursday May 12 for Anderson."

About thirty minutes thereafter, the Assistant Train Dispatcher cancelled his previous instructions to the Agents at Redding and Cottonwood and issued new instructions to the Agents at Redding and Anderson containing the information he received on the telephone from the Ticket Clerk at Redding or based upon the same information he received by telegram.

On July 21, 1960, Carrier's Superintendent wrote to Petitioner's District Chairman, in part, as follows:

"On May 10th Ticket Clerk Redding called Assistant Chief Dispatcher at Dunsmuir on telephone at approximately 7 P. M. to determine if he had received change in movement of passengers. Inasmuch as dispatcher's office had not received change, and as a matter of information, Ticket Clerk Redding quoted letter from Passenger Department and then sent telegram to dispatcher containing information previously telephoned.

Inasmuch as information was handled by telegraphers at both Redding and Dunsmuir, they were not deprived of any work."

The District Chairman replied on August 1, 1960 that:

"The Telegraphers' Agreement gives the telegraphers the exclusive right to handle communications of record, BEFORE not AFTER it has been handled by every other craft on the railroad."

There can be no question that the telephone message from the Ticket Clerk to the Assistant Train Dispatcher is a communication of record. It was concerned with the number of passengers, their place of entrainment and their destination. In this respect it had to do with the operation of the train as well as with the safety of the passengers. The message should have been relayed to the Assistant Train Dispatcher at Dunsmuir by the Telegrapher-Clerk at Dunsmuir Yard.

It is undisputed, however, that soon after the Ticket Clerk at Redding relayed the information to the Assistant Train Dispatcher he confirmed it in a telegram sent by an employe covered in the Telegraphers' Agreement.

It is not certain, and the record does not show, whether the Assistant Train Dispatcher cancelled his previous instructions and issued new ones before or after he received the telegram from Redding. We do know that the telephone conversation was approximately at 7:00 P. M. and the Assistant Train Dispatcher's new instructions were sent about 7:30 P. M. Enough time intervened for the Assistant Train Dispatcher to have received the confirming

telegram from Redding. In the absence of proof to the contrary, we assume that the Assistant Train Dispatcher acted on the telegram and not on the oral conversation.

Since employees covered by the Scope Rule of the Agreement both at Redding and at Dunsmuir handled the messages of record and were not deprived of work, they sustained no loss.

The claim is denied on the basis that the Assistant Train Dispatcher acted on the Telegram sent to him from Redding and no wage loss was suffered by the Claimants.

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 No. 1 is denied.

Claim No. 2 is denied in accordance with the Opinion.

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.

STATEMENT OF CARRIER MEMBERS, AWARD 12620, DOCKET TE-13095 (Referee Dolnick)

The claim should have been denied on the ground that the employees failed to prove that any of the telephoning involved in the claim is reserved exclusively to them. Awards 12385 - 12384 - 12383 (Engelstein), 12122 - 12118 - 11805 - 11707 - 10954 - 10425 (Dolnick), 12097 (Dorsey), 12085 - 12078 (Kane), 11812 (Christian), 11730 (Rinehart), 11510 (Stark), 11401 - 10700 (Hall), 11343 - 11306 (Miller), 11147 (Rose), 10918 (Boyd), 10836 (Ray), 10825 (Sheridan), 10763 (Russell), 10673 (Ables), 10619 (Labelle), 10525 - 10237 (Carey), 10493 - 10492 (Dugan), 9953 (LaDriere), 9572 (Johnson), 9343 (Begley).

There is no basis in this record for the statement that:

"There can be no question that the telephone message from the Ticket Clerk to the Assistant Train Dispatcher is a communication of record. . . . The message should have been relayed to the Assistant Train Dispatcher at Dunsmuir by the Telegrapher-Clerk. . . ."

The Award also presents an erroneous view as to the effect of a confirming message—see Award 12229 (Engelstein). Even under the ruling in Award 4516 (Carter), on which the employes primarily rely, the rights of Telegraphers are not violated where telephoning is not in lieu of work historically and traditionally done by the Morse Code Telegrapher. Where information is telephoned by other employes in special circumstances and confirmed by sending a telegram in the usual course, such telephoning is obviously not in lieu of anything that was ever done by the Morse Code Telegrapher. In sending a telegram, the Telegrapher still does all that he would have done in former days, and the telephoning is something additional that is made possible by the newer communications media.

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