Award No. 13082
Docket No. TE-11998

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Ables, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Louisville and Nashville Railroad (NCStL District) that:

1. Carrier violated the agreement between the parties when on April 27, 1959 it required or permitted an employe not covered by the agreement to receive and copy a message at Cravens Yard Office.

2. Carrier shall be required to compensate Extra Telegrapher B. L. Hill in the amount of a minimum day's pay ($18.64).

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

Cravens Yard Office is located on the north side of yard tracks at the south end of Cravens Yard. There are no positions under the Telegraphers' Agreement at this location. Lewis Street Tower is about one-eighth of a mile south of Cravens Yard Office on the south side of the yard tracks. There are three basic telegrapher positions at Lewis Street Tower furnishing communication service 24 hours a day, seven days a week.

On April 28, 1959, the Chief Clerk at Cravens Yard Office received and copied the following message:

"PWV 1397 BOX MTY 580 D5 4:40 P. M.
LN 182609 HOP MTY 580 D5 4:40 P. M.
LN 74598 HOP MTY
LN 62329 HOP MTY 580 D5 4:40 P. M.
SAL 8401 HOP MTY 580 D5 4:40 P. M.
MKT 91886 BOX MTY 580 D5 4:40 P. M.
LN 36017 GON LOAD 316 D5 9:10 P. M.
LN 29097 GON LOAD 311 D5 10:00 P. M.
LN 50865 GON LOAD 311 D5 10:00 P. M.

In view of the circumstances involved in this case, we do not consider the claim in order and same is, therefore, respectfully declined.

Yours truly,

/s/ W. S. Scholl.
Director of Personnel."

POSITION OF CARRIER: Foreman of switch engines at Cravens turn in their Form 443 upon going off duty at that point. On the date here involved Foreman Lancaster forgot to turn his form in and carried it home. It was, therefore, an unusual occurrence when the acting chief clerk had to call the operator at Stevenson to contact Foreman Lancaster. Lancaster, of course, was not familiar with instructions as to the use of the company phone in connection with transmitting matters of record.

Extra clerk Hunter who seldom worked the chief clerk's job was, of course, not as familiar with the instructions as the regular man.

Telegrapher Kimbell, however, who was regularly assigned as telegrapher at Stevenson, was, or should have been, fully informed as to the use of the company telephone by other than those covered by the telegraphers' agreement.

Clerk Hunter only requested Telegrapher Kimbell to **contact Foreman Lancaster and ask him if he had booked any cars the previous day and if so what he did with his Form 443, he requesting telegrapher Kimbell to let him know what Lancaster said.**

Instead of complying with Clerk Hunter's request, telegrapher Kimbell either arranged for or permitted Foreman Lancaster to use the company phone.

In other words, telegrapher Kimbell "set the stage" for the claim which ensued.

If either Foreman Lancaster or Clerk Hunter had requested, or Telegrapher Kimbell had suggested that a wire confirmation be sent to the operator at Cravens, unquestionably no claim would have been filed.

A telegrapher was on duty at Cravens and a telegrapher (Kimbell) was on duty at Stevenson at the time involved. There was, therefore, no occasion to call out an extra telegrapher in connection with the incident here involved. Obviously no telegrapher was deprived of compensation he would have received had the matter been handled differently.

It is, therefore, obvious that the claim made is in fact a penalty claim based on alleged violation of the scope of the telegraphers' agreement.

The telegraphers' agreement contains no provision which provides for penalty pay such as here involved.

This Board has held that it is well established by the precedents of previous awards that the Board will not impose a penalty where none has been specified in the agreement.

Carrier submits in the circumstances the claim should be denied.

OPINION OF BOARD: We agree with the Carrier that the claim is "ultra technical." In addition, we think that the filing of the claim shows

pettiness of purpose and makes a mockery of the legitimate use of grievance procedures established by Congress at public expense. There are enough substantial differences between the parties requiring studied, careful analysis to "adjust the dispute" so that time, money and effort should not be wasted on claims such as these.

In this case, the switch engine foreman forgot to hand in to the yard clerk where he worked a list of the cars he had booked. Later the clerk telephoned the operator, who is under the Telegraphers' Agreement, to get this information from the foreman. The operator called back, as requested, but instead of relaying the information himself turned the telephone over to the foreman who was at his side and the foreman read the list of cars to the clerk. The claim is not that there was anything wrong with this procedure but that the operator had not confirmed the message by wire even though the operator himself did not think this was necessary under the circumstances.

Since the Carrier concedes there was a technical requirement to confirm the message, we are not going to look behind the question whether this was a message of record requiring confirmation in any event; or whether the action of the operator constitutes constructive compliance with the requirement that employes under the Telegraphers' Agreement handle such messages. We will find, therefore, a technical violation of the Agreement.

To adjust the dispute the employes ask that an extra telegrapher be paid one day's pay for the violation. The extra telegrapher is selected because telegraphers were on duty at all places material in this case at the time of the technical violation.

As in Award No. 10767 (this referee), we believe simply that a finding the Carrier violated the Agreement will "adjust" this dispute, without monetary assessment. In fact, there is much less reason to award damages or a penalty in this case for the reasons given, than under the circumstances of the prior award.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 technically violated.

AWARD

Item 1 of the claim is sustained; Item 2 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1964.