

Award No. 13335
Docket No. TE-14088

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ERIE-LACKAWANNA RAILROAD COMPANY
(Erie District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Erie-Lackawanna Railroad (Erie District), that:

1. Carrier violated the agreement at Addison, N.Y. when on April 11, 1961 it caused, required or permitted Conductor Tyler to perform the work of a Telegrapher and Telephoner.

2. Carrier shall compensate Agent-Operator J. A. Horey for a day's pay (8 hours) at the pro rata rate of his position (\$2.506) per hour, total \$20.05. [Carrier's File 220.9-Item 190.]

EMPLOYEES' STATEMENT OF FACTS: Mr. J. A. Horey, claimant, is the occupant of a 5-day position at Addison, New York, classified as Agent-Operator, assigned to work 8:15 A.M. to 5:15 P.M. (1 hour lunch), Monday through Friday.

At 11:54 A.M. on April 11, 1961, while Mr. Horey was on duty, he received a call from the train dispatcher. The dispatcher requested Mr. Horey to have Conductor Tyler get on the phone. The dispatcher then gave the following message to Conductor Tyler, while Agent-Operator Horey sat by:

"To C&E Extra 18 at Addison

Pick up P&S 9171 cripple at Big Flats for Elmira shop. Spot the B&O car at 'Black Brothers'. Leave Eng. 1221 at Elmira, change off for Eng. 1227.

/s/ C.S.K."

Claim was filed by the District Chairman, charging agreement violation when the train dispatcher transmitted the message to the Conductor, and submitted that communication work of the type and nature here involved was covered by the Agreement and accruable to the position occupied by Mr. Horey, for which alleged violation request of a day's pay in favor of Mr. Horey was made. Carrier denied the violation charge and the payment request.

III. CONCLUSION

1. The claimant was on duty and under pay — he lost nothing.
2. Carrier has shown that Petitioner's claim in this dispute of an exclusive right to "transmit or receive by telephone, telegraph or other communicating device" all "messages * * * or other information in connection with train movements at stations where an employe covered by this agreement is employed, except in extreme emergency" and "at other points" has been asked for by Petitioner but has not been granted. Following this, Carrier has established that such an exclusive right cannot be shown by Petitioner by way of past practice and custom on the property. Third Division Awards 6788, 7076, 7826, 7954, 7970 and 8208 dictate a denial decision in this dispute.
3. In view of all these facts, it is axiomatic that if this Board were to issue a favorable decision to Petitioner in this dispute it would be writing a new rule in the agreement and granting unto Petitioner an exclusive right it has never heretofore enjoyed. This Board admittedly does not have this right, see Awards 6341, 6625, 7153, 7861, 7953, 8538, 8564 and 8676.
4. Petitioner cannot authoritatively prove that any "messages or communications of record" were handled by others in this dispute, as it must, and Third Division Award 5660, one of many, is firm support that this claim is without foundation.
5. This record firmly establishes that the claim of Petitioner, not only in the instant dispute but in the other similar cases it has taken to this Board is most emphatically without merit under any rule of agreement, reason or logic and as Petitioner cannot otherwise prove, its claims must fail.

Based upon the facts and authorities cited, Carrier submits that all these cases should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is regularly assigned as Agent-Operator at Addison, New York. While he was on duty on April 11, 1961, he received a telephone call from the train dispatcher who asked him to put Conductor Tyler on the telephone, which he did. In its Submission Telegraphers say:

"The dispatcher then gave the following message to Conductor Tyler, while Agent-Operator Horey sat by:

'To C&E Extra 18 at Addison

Pick up P&S 9171 cripple at Big Flats for Elmira shop.
Spot the B&O car at "Black Brothers". Leave Eng. 1221
at Elmira, change off for Eng. 1227.

/s/ C.S.K.'"

The substance of the conversation, so says Telegraphers, was: (1) subject matter the transmittal of which is reserved to telegraphers; and, (2) direct communication by the dispatcher to the conductor in violation of the Agreement.

The Scope Rule of the Agreement is general in nature. To prevail, Telegraphers have the burden of proving, by a preponderance of the evidence, that messages of this kind have been transmitted, exclusively, on the property, by employees covered by the Agreement. Instead, it argues, in effect, that industry wide the transmission of such information has been, historically, the work of telegraphers.

The work reserved to Telegraphers is not uniform on different systems even though the Scope Rule of the Telegraphers' Agreements is substantially and sometimes identically the same. What is reserved to Telegraphers under a Scope Rule, general in nature, is a matter of proof; not of predilection.

Telegraphers have failed in its burden of proof. We will, therefore, dismiss the claim.

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 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 Claim must be dismissed for failure of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1965.