

Award No. 13374
Docket No. TE-12757

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ILLINOIS TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Committee of The Order of Railroad Telegraphers on the Illinois Terminal Railroad Company, that:

1. Carrier violated the Agreement between the parties when on July 4 and August 8, 1960, it required or permitted a Chief Train Dispatcher to transmit a message to Train No. 203 by use of telephone.
2. Carrier shall compensate in the amount of a day's pay each, D. L. Hastings, senior available extra operator on July 4, and J. C. Schultz, senior available extra operator on August 8, 1960.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective December 16, 1957, is available to your Board and by this reference is made a part hereof.

Le Claire Tower, Edwardsville, Illinois, is a continuously open office manned by employees holding seniority under the Telegraphers' Agreement. In 1953, concurrently with the establishment of interdivisional trains, communication by use of radio-telephone was inaugurated. A radio-telephone was installed in Le Claire Tower, and the use thereof was assigned to the employees working there. All communication by radio-telephone with the crews of trains was performed by the operators in Le Claire Tower.

Six years later (1959) a radio-telephone was installed in the Train Dispatcher's Office. When the General Chairman of the Organization protested this installation, for use by the Train Dispatchers, he was informed by the Superintendent that the use of the radio-telephone in the Train Dispatcher's Office was for emergency purposes only, and that the normal use of this apparatus would continue as it had since 1953. However, some of the Train Dispatchers did use this telephone, which resulted in a claim being filed. This claim was handled up to the highest officer of the Carrier and under date of May 10, 1960, F. L. Dennis, then President of the Carrier, in a letter to the General Chairman, said:

"The radio-phone in the Dispatcher's office would only be used in an emergency, and the General Superintendent would issue the necessary instructions to the Dispatchers in the use of the radio-phone."

At 7:50 P.M. on July 4, 1960, the Chief Dispatcher used this telephone to call Train No. 203, and transmitted the following message to that train:

"No set-out or pick-up at Le Claire."

At 8:25 P.M. on August 8, 1960, the Chief Dispatcher again used this telephone, and called Train No. 203, transmitting the following message:

"Head in No. 3, set out on No. 5 and pick up No. 4 and No. 2."

Claim was filed and handled in the usual manner up to and including the highest designated officer of the Carrier and has been declined. Correspondence reflecting this handling on the property is attached hereto as ORT Exhibits 1 through 10.

POSITION OF EMPLOYES: The work involved in this dispute is work covered by the Agreement and belongs to employees holding seniority under the Agreement and cannot be delegated to others by the Carrier.

Rule 1, Scope, of the Agreement reads as follows:

"RULE 1. SCOPE

(a) This agreement will cover the employment of Agents, Agent-Telegraphers, Agent-Telephoners, Assistant Agents, Telegraphers, Telephoners (except telephone switch board operators), Teletype or Printer Operators (except teletype or printer operators in General Office), Towermen and Block Operators, hereinafter called employees.

(b) When new positions like in character to those incorporated in this agreement are created, compensation, duties and hours of service will be arranged in conformity with existing positions of the same relative character covered herein. If there are no existing positions of the same class, the rate for such newly created position shall be negotiated.

(c) No position shall be abolished and a new one created under another title covering the same class or grade of work for the purpose of reducing the pay or evading the application of this agreement. The intent of this paragraph is to prevent a reduction in rate by a reclassification where a vacancy in an existing position is to be filled.

(d) Positions covered by this agreement must be filled by employees coming within the scope of the agreement. The work covered belongs to the employees herein classified, and shall not be removed from the scope except by agreement between the parties."

Paragraph (a) of the above Rule lists the classifications among which is "Telephoners"; Paragraph (d) clearly states that the work covered belongs to the employees herein classified and shall not be removed from the Scope except by agreement between the parties.

many years for communications, such as here involved, between train crews and train dispatchers.

Certainly it cannot be a violation of the agreement to perform by radio such communications as have been handled for many years by telephone without violation.

In Third Division Award 3603, we find the following:

"This Board has held on numerous occasions that not all telephone communications are subject to the Telegraphers' Agreement."

Attention of the members of the Board is directed to Third Division Award 3050, which, among other things, contained the following holdings:

"Location not listed in wage schedule by the Agreement is not subject to the Agreement. Not all telephone work comes under the Telegraphers' Agreement. Before items of work become exclusively the property of the Telegraphers, the items must be of record."

Records were not made of any of the conversations involved in the instant dispute.

Other Awards that have dealt with these questions of exclusive right to telephone communications, handling of messages of record, and the coverage of Telegraphers' Agreement Scope Rules are 4208, 4280, 5229, 6364, 7968 and 8208, all of which were denial awards, to which the attention of the Board is directed.

It is the position of the carrier that the findings of the Board in connection with telephone communications apply equally as well to radio communications, and there is no agreement requirement or authority for the payment of these claims.

There is no authority for ordering that they be allowed eight (8) hours' pay for such trivial amount of work as involved in each of these instances, particularly where they did not perform any service whatever for the payments claimed.

(Exhibits not reproduced.)

OPINION OF BOARD Le Claire Tower, Edwardsville, Illinois, is manned by employees holding seniority rights under the Telegraphers' Agreement. The following facts are not contradicted by the Carrier in the record: In the year 1953, communication by the use of radio telephone was inaugurated and a radio telephone was installed in Le Claire Tower, the use thereof being assigned to employees under the Telegraphers' Agreement who were working there. Communication by radio telephone with the train crews was conducted by operators in Le Claire Tower. Later, effective December 16, 1957, a new Agreement was entered into between the Carrier and the Telegraphers, which Agreement superseded all previous Agreements. It contains a Scope Rule with the following provision:

"(d) Positions covered by this agreement must be filled by employees coming within the scope of the agreement. The work covered belongs to the employees herein classified, and shall not be removed from the scope except by agreement between the parties."

In the year 1959, a radio telephone was installed in the Train Dispatcher's office. The General Chairman of the Organization protested this installation, and was advised by the Superintendent that the use of the radio telephone in the Dispatcher's office was for emergency purposes only, and that the normal use of this apparatus would continue as it had since 1953. However, some of the Train Dispatchers did use the radio telephone for messages similar to the ones involved in the current dispute which resulted in a claim being filed May 19, 1959, known as ORT File No. 19. Final disposition of that claim was made in a letter from Carrier's President, F. L. Dennis, with the following recital of understanding:

"that the radio-phone in the Dispatcher's office would only be used in emergency, and the General Superintendent would issue the necessary instructions to the dispatchers in the use of the radio-phone."

With this assurance from the President, the penalty section of ORT File No. 19 was withdrawn.

Notwithstanding this declaration by the President, subsequently, at 7:50 P. M., July 4, 1960, the Chief Train Dispatcher used the telephone in the dispatcher's office to call Train 203 and transmit the following message to that train.

"No set up or pick-up at Le Claire."

And, again, at 8:25 P. M. on August 8, 1960, transmitted the following message:

"Head in No. 3, set out in No. 5 and pick up No. 4 and No. 2."

The claim progressed here is identical to the one presented in ORT File No. 19.

Carrier contends that the use of the radio telephone by the dispatcher was merely to expedite the movement of Train 203; that this communication was not a matter of record, and that a conversation which is not a matter of record is not reserved exclusively to the Telegraphers; further, Carrier urges that there are no rules in the Agreement that give to the telegraphers the exclusive use of the radio telephones.

Employs contend that the work involved in this dispute is work covered by the Agreement within the understanding of the parties to the Agreement; that they are still performing the same type of radio telephone work that they were doing at the time the 1957 Agreement was entered into, and that the 1957 Agreement by its terms superseded all previous Agreements.

Paragraph (d) of the Scope Rule, heretofore cited, provides that "the work covered . . . shall not be removed from the Scope except by agreement between the parties." By the declaration of the Superintendent in 1959 that the normal use of this radio telephone apparatus would continue as it had since 1953, and by the statement of the Carrier later in determining a claim identical to the one here presented, we must conclude that work of this type involving the movement of trains has been exclusively reserved to employees under the Telegraphers' Agreement, and can only be changed by Agreement between the parties. Consequently, we must find the Agreement has been violated. This matter is being determined in accordance with the rules of the effective Agreement and on the facts presented in this record, and should not be regarded as a precedent award.

Rule 7 (the Call Rule) of the effective Agreement provides that an employe called to perform work not continuous with the regular work period shall be allowed a minimum of two (2) hours at the overtime rate for two (2) hours' work or less. In compliance with this Rule, D. L. Hastings, senior extra available operator on July 4, 1960, will be allowed compensation for two (2) hours at the overtime rate, and J. C. Schultz, senior available extra operator on August 8, 1960, will be allowed compensation for two (2) hours at the overtime rate.

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 has been violated.

AWARD

Claim sustained 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 26th day of February 1965.