

Award No. 13723
Docket No. TE-10949

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

PENNSYLVANIA-READING SEASHORE LINES

STATEMENT OF CLAIM: Claim of J. J. Leavens, Local Chairman, ORT, on the P.R.S.L. for senior idle extra employe and if none available, for the senior idle regular employe for eight (8) hours' pay for July 13, 14 and 15, 1957, account Conductor of Train No. 1041 telephoning CT-15 Reports direct to Train Dispatcher's Office in Camden in violation of the Scope of the Agreement. This work being the assigned duties of the Telegraphers in 'K' Office. Article XL (a), (c) and (e) supporting.

EMPLOYEES' STATEMENT OF FACTS: This dispute concerns claims for pay for three days, July 13, 14 and 15, 1957. The controversy started with Carrier's rejection of time claims made by Mr. J. J. Leavens, Local Chairman, in behalf of a senior idle employe or employes. Thereafter, the following correspondence was exchanged:

"September 3, 1957

Mr. John Leavens
Local Chairman, ORT

Referring to your letter of August 10, 1957, and discussion at our meeting on August 20, 1957, relative to the following subject:

'Claim of J. J. Leavens, Chairman, ORT, on the P.R.S.L. for senior operator if none available. Senior idle regular employe claiming eight hours for July 13, 14 and 15th, account Conductor Pierce, Train No. 1041, phoning CT-15 direct to Train Dispatcher, and denied by you July 23, 1957.'

The claim in this case is predicated on the fact that the Conductor of Train 1041, after arrival at Atlantic City, telephoned to the Train Dispatcher at Camden certain information from Form CT-15, such as consist of train and number of passengers carried.

This work has always been required of Passenger Conductors operating Train 1041 and therefore did not violate the Scope Rule

question; that said employees have never performed the specific work in question and that the Claimants are not entitled to the compensation claimed.

Therefore, your Honorable Board is respectfully requested to dismiss or deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute involved herein was referred to the National Disputes Committee established by Memorandum Agreement dated May 31, 1963, to decide disputes involving interpretations on applications of certain stated provisions of specified National Non-Operating Employee Agreements. On April 22, 1965, that Committee rendered the following Findings and Decision (NDC Decision 23):

"FINDINGS: (ART. V) Paragraph 1(a) of Article V of the August 21, 1954 Agreement provides that:

'All claims or grievances must be presented in writing by or on behalf of the employee involved * * *'

In its submission to the Third Division, Carrier contends that the claim was not filed in behalf of any specifically named individual, and as such, is not a valid claim under Article V of the August 21, 1954 Agreement. The record does not indicate that such contention was made during handling on the property.

The National Disputes Committee rules that inasmuch as the Carrier did not raise on the property this contention that the claim did not meet the requirements of Article V, it may not raise such contention before the Third Division.

DECISION: The Carrier waived the contention that the claim did not meet the requirements of Article V by its failure to raise that contention on the property.

This decision disposes of the issues under Article V of the August 21, 1954 Agreement. The docket is returned to the Third Division, NRAB, for disposition in accordance with Paragraph 8 of the Memorandum Agreement of May 31, 1963."

On July 13, 14 and 15, 1957, the Conductor of Train No. 1041 upon his arrival at Atlantic City at 12:45 A. M., telephoned certain information from Form CT-15 to the Train Dispatcher at Camden, New Jersey. The "K" Telegraph Office at Atlantic City, normally open during the first and second shifts, was closed during the third shift, the arrival period of Train No. 1041.

The Organization contends that the CT-15 Report is a communication of record and must be transmitted by an employee under the Scope of the Telegraphers' Agreement. It maintains that such reports are transmitted by a telegrapher for all trains, and that Train No. 1041 should not be an exception.

Carrier denies that the Scope grants telegraphers the exclusive right to this work, and it asserts that Passenger Conductors operating Train No. 1041 have customarily telephoned the information contained in the CT-15 Report directly to the Office of the Train Dispatcher at Camden.

The Scope Rule is of the general type which sets forth the various classifications of employees. It does not delineate the specific work which may be performed by these employees. Since the Rule does not ascribe the work of telephoning the information contained in the CT-15 Report to telegraphers, Organization must prove its claim to this work through custom, practice, and tradition.

For a period of 23 years, the Conductors of Passenger Trains No. 1041 have telephoned the information from Form CT-15 directly to the Dispatcher at Camden. Although employees covered by the Telegraphers' Agreement performed this work during the first and second shifts, they have not in all these years been on duty during the third shift to do the work when Train No. 1041 arrived at Atlantic City.

Considering that the Scope does not reserve the work exclusively to telegraphers, that members of this craft have not performed this work for Train No. 1041, and that there has been a long tradition and practice for Conductors of this train to telephone the information directly to the Train Dispatcher at Camden, we find that the Agreement was not violated.

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 the Agreement of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1965.