

Award No. 13743

Docket No. TE-13396

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Texas & Louisiana Lines), that:

1. Carrier violated the terms of the parties' Agreement because, on July 5, 6, 7, 12, 19 and 20, 1961, it required or permitted employees not covered thereunder to transmit communications of record from Macdona, Texas.

2. Carrier shall be required to pay each of the two below-named claimants a day's pay at time and one-half rate for each date shown after their names: P. A. Chauvin — July 5, 6, 12 and 19, 1961; W. J. Wood — July 7 and 20, 1961.

EMPLOYEES' STATEMENT OF FACTS: As shown in the Statement of Claim, the incident which occasioned the claims arose when Carrier required or permitted non-scheduled employees to handle messages and transmit communications of record from Macdona, Texas.

Macdona is 17.5 miles west of San Antonio, Texas. A Maintenance of Way gang, under the supervision of Foreman E. L. White, or Relief Foreman Rodriguez, was assigned to Macdona, where mobile trailers were located for their use.

During the course and progression of their work, it was necessary that Form "Y" train orders be issued for protection of the working force on the ground as well as trains moving through the territory. A blank copy of Form "Y" Train Order is shown following:

"TRAIN ORDER NO. 19.....

To C & E

The Scope Rule does not define work covered by the Agreement, but lists the classes of workers included. But of necessity the subject matter of the contract is work; and to define such, recourse has been had to the kind and character of work usually and customarily performed by the class of employee included in the Scope Rule. Telephone operators (except switchboard operators) and agent-telephoners are included. But this does not mean all work of transmitting messages by telephone is included in the Scope Rule (Awards 603, 652, 4280).

The telephone is a convenient and ready way to communicate; its use requires no training. Consequently when this Board has been called upon to interpret the Scope Rule of the Telegraphers, such as here involved, with respect to the work of transmitting communications by telephone, it has recognized that every use of the telephone was not intended as Telegraphers' work and, in general, has confined the application of the rule to the work of transmitting or receiving messages, orders or reports of record by telephone in lieu of the telegraph. See Awards 4516, 4280 and 1983."

Award No. 9961 states in the Opinion of Board as follows:

"That telegraphers do not have the exclusive right to use telephones has been made clear by Awards 5181, 5660, 7968, 9572 and numerous others, and no provision in the applicable Agreement calls for an exception to that general principle."

It has been normal procedure on this railroad for many years for section foremen to request orders late at night for the following day's protection. Prior to December 1, 1946, at which time Rule 17 (C) was written into the new and current agreement, the Organization complained that section foremen who had Company telephones in their homes were copying line-ups and OSing trains. The rule, now contained as 17 (C) was agreed to prior to making of the new agreement. This fact clearly establishes that telephones have been used by section foremen. This is the second case which has been progressed to this Division under similar contentions, the former case also originated at blind sidings and referred to requests for Form Y order by section foremen. Case relating to train orders being copied by conductors at blind sidings was sent to the Third Division, NRAB, and resulted in Award No. 7593 which was favorable to this Carrier. The entire case hinges on the right of MofW employees to use the telephone in requesting that necessary train-order (Form Y) protection be afforded on the following day. In each of the claims cited above there was no telegrapher employed at the location, Macdona, a blind siding.

Carrier respectfully requests a denial of this case since it violates no part of the effective current Telegraphers' Agreement.

OPINION OF BOARD: The parties, issue and Agreement are the same as in Award No. 13742. For reasons stated in that Award we will deny 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July 1965.