

Award No. 14226
Docket No. TE-14136

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Herbert Schmertz, 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 Lines and Texas and Louisiana (Texas and New Orleans Railroad Company), that:

1. Carrier violated the terms of an agreement by and between the parties hereto when on July 31, August 7, 15 (twice), 20 (four times), 21, 22 (twice), it required or permitted employes outside the scope of the parties' Agreement at Harlingen, Alice, Houston and Brownsville, Texas to transmit and/or receive messages of record over the telephone.

2. Carrier shall, because of the violations set out in paragraph one hereto, compensate D. L. Horak, regular occupant of the Harlingen-Brownsville Relief position two (2) hours at the time and one-half rate for each date set out in paragraph one hereof, except for two (2) of the four (4) violations occurring on August 20, 1962, Carrier shall compensate P. B. Guttenberger, regular occupant of the Telegrapher-Clerk's position at Harlingen, Texas two (2) hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto effective December 1, 1946, and as amended. Copies of said Agreements are, under law, presumed to be on file with your Board and are, by this reference, made a part hereof.

At pages 28, 30 and 31 of the parties' Agreement (Rule 37, Wage Scale) are listed the positions existing at Houston, Alice, Harlingen and Brownsville, Texas, on the effective date thereof. For your Board's ready reference the listings, and the order named, read:

Each of these claims were submitted by the Local Chairman because Carrier's clerical forces at Harlingen and Brownsville made use of Carrier's telephone lines to give information concerning the loading of cars with cotton to Carrier's traffic representatives in Houston. The shipments involved were made by Anderson Clayton Company, a large cotton firm, whose general offices are located in Houston. The Cotton Company desired that their Houston office prepare bills of lading for various shipments they made from distant shipping points and that Carrier's representatives in the Traffic Department at Houston sign such bills of lading. To permit this handling it was necessary for the Carrier's station forces at the origin points of the shipments to inform the Houston representatives the car initial and number into which the shipments were loaded and to confirm that the loading had been accomplished and that the shipments were in the Carrier's care and control. After the Compress Company at the origin station furnished Carrier's local agency forces a loading slip showing the car number and initial and certifying that the shipments were loaded into that car, telephone conversation then was had by the clerk who received the slip with the Houston office and authority to sign the bill of lading was given to the Traffic Department representative. An office copy of the bill of lading was then mailed from Houston to the origin station for filing. The Local Chairman contended that such conversation could be made only by a telegrapher under the Scope of the ORT Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts giving rise to this case are not in dispute. On the dates set forth in the Statement of Claim messages were transmitted and received by telephone by employees not covered by the agreement. It furthermore is undisputed that no telegraphers were on duty during the times and dates in which such use of the telephone was made.

The Organization takes the position that the use of uncovered employees to perform the subject work constituted a violation of the agreement. This violation, they contend, stems from Interpretation 4 to Supplement 13 to General Order 27, as promulgated by the United States Railroad Administration which has the effect of reserving to telegraphers work referred to as "messages of record."

This interpretation reads as follows:

"(e) Employees whose duties require transmitting and/or receiving messages, orders, and/or reports of record by telephone between various railroad offices in the same city or district in lieu of telegraph?"

DECISION: Yes; the use of the telephone to transmit or receive messages, orders, or reports of record in lieu of the telegraph carries to the position the provisions of Supplement No. 13."

The Organization further asserted that since General Order 27 reserved certain work to telegraphers and since the Scope Rule of the agreement applied the agreement to telegraphers, any work which fell within the category set forth in General Order 27, Supplement 13, Interpretation 4, was exclusively that of telegraphers under the agreement and any assignment of that work to individuals not covered by the Telegrapher Agreement was a violation of that agreement.

In the Organization's opinion the work in question was of such a nature. Specifically, according to the Organization, the transmission of any messages which the Carrier deems important enough in the operation of the railroad to "record" in written fashion is the exclusive work of employees covered by this agreement. The Organization cited Award 1983 (Bakke) in support of this position. The messages in question, in the Organization's view, fall within this category.

Putting this another way, it was the Organization's view that telephone transmission of "messages of record" was within the exclusive jurisdiction of this agreement; that the work in question was of this nature and that, therefore, the agreement was violated .

The Carrier took the position that the work in question was not the transmission of "communications of record" as that term has been interpreted and applied and also that the work was not reserved exclusively to the employees under the Scope Rule. There is some question as to whether or not the Carrier impliedly conceded that if there is a finding that the work was "communication of record" it became the exclusive work of employees covered by this agreement.

The Carrier representative argued that the issue was handled on the property both by a denial that there was "transmission of 'communications of record'" and that irrespective of whether or not they were "communications of record" the work was not exclusively reserved under the Scope Rule.

In effect the Carrier representative argued that the Carrier on the property took the position that unless there is a finding of exclusivity under the Scope Rule there can be no violation.

The Organization representative contended that this interpretation of the Carrier's position in its submission and on the property is inaccurate. They urged a finding that the Carrier had conceded that if the work was a "communication of record", it was covered by the agreement. The Organization conceded that the Carrier did contend that the work was neither "communication of record" and therefore not so reserved, nor was it otherwise reserved under the Scope Rule as a result of any practice or custom.

From the foregoing it is clear, based upon the Organization's case, that there can be no violation unless the work constituted transmission of "communications of record."

Whether or not such a finding automatically results in a violation is, of course, a second issue. The Organization representative says yes, and that the Carrier conceded this on the property and in the submission. The Carrier representative says there was no such concession and that for there to be a violation it must be found that through practice this work was reserved to employees of this agreement.

The Carrier in its submission asserts that various awards of this Board have established that for there to be a "communication of record", the "communication must effect the operation of trains or the safety of persons and property." A review of the awards on this subject would appear to sustain this view.

It is this Board's opinion that the matters communicated do not fall within this definition.

What was involved here was a change in a billing operation which in essence was a clerical task. Instead of the Carrier and the shipper writing bills of lading and waybills in a fragmented manner at each loading station the shipper requested and the Carrier agreed to centralize the bill of lading procedures. It, therefore, used the telephone to transmit the information which normally passed between the Carrier and the shipper at the loading site. Through use of modern communication equipment a clerical operation was changed and presumedly made more efficient. It was argued by the Organization that because the information for the waybill showed routing, etc., it affected the "operation of trains."

We are unable to arrive at that conclusion. The primary and, indeed, single purpose of the procedure was to comply with the legal requirements of negotiable instruments, i.e., bills of lading and waybills. While these documents may show routing, etc., their purpose is not for the operation of trains. Rather, they are legal documentation of what is being shipped and to where it is destined. That the telephone was used to transmit the information to be contained therein is incidental, because the information was clerical in nature, and, therefore, did not constitute a "communication of record."

Having so found, it is unnecessary for the Board to treat with the issues raised by the Carrier.

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 there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty

Dated at Chicago, Illinois, this 11th day of March 1966.