

Award No. 14312
Docket No. TE-11277

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-San Francisco Railway that:

1. Carrier violated the Telegraphers' Schedule when, on May 24, 1958, at 1:50 P.M., Mr. R. M. Williams, carman, was permitted to use the dispatcher's telephone to transmit a written communication. He was using an emergency telephone at Rook, Mo., a blind siding. Message sent reading as follows:

"From Rook, Mo., May 24, to JWC, Springfield.
SFRD3859 repaired and ready to move.
R. M. Williams."

2. Because of such violation Carrier shall compensate Mr. H. P. Hilton, senior idle extra telegrapher on the date of May 24, 1958, in the amount equivalent of one day's pay, for the above violation, which is eight hours at \$2.192, or a total of \$17.54.

EMPLOYEES' STATEMENT OF FACTS: The Agreement currently effective between the parties contains the following scope rule:

"ARTICLE I

(1) Employees, except train dispatchers, who are required by direction of officer in charge to handle train orders, block or report trains, receive or forward written messages by telegraph, telephone or mechanical telegraph machines, (defined as telegraphers, telephone operators, block operators, operators of mechanical telegraph machines, agent-telegraphers, agent-telephoners) agents, assistant agents, ticket agents, assistant ticket agents and car distributors, listed in appended wage scale, also tower and train directors, towermen, levermen, staffmen, are covered by this Agreement and are hereinafter collectively referred to as employees, and when so referred to all are included."

"C&E No. 42 — NB — DAD — 815a Sp. 5/24

Change engs with Salem local. P/u 1 car on east end of siding Rook handle to Lindenwood WB at Lwood

JWC"

OPINION OF BOARD: At 8:45 A. M., May 24, 1958, the chief dispatcher at Springfield, Missouri, was advised by wire that car SFRD3859 was set out on the siding at Rook, Missouri, due to a hotbox. Dispatcher immediately sent Carman R. M. Williams to Rook to repair the car and ordered local train No. 42 to pick up the car in passing on its normal run. At 1:50 P. M. Carman Williams, using the emergency telephone at Rook, a blind siding, called the Springfield train dispatcher advising him that the car was repaired and ready to move. Carman then proceeded to Pacific and filed a wire to the Springfield chief dispatcher advising of the condition of car SFRD3859 at Rook and car SF95334 at Pacific. There is no evidence of other relevant communications or resultant action.

Claimant alleges that the use of the emergency telephone at Rook by Carman Williams, an employe not covered by the Telegraphers' Schedule Agreement, was a violation of that Agreement.

The Agreement currently effective between the parties contains the following scope rule:

"ARTICLE I

(1) Employes, except train dispatchers, who are required by direction of officer in charge to handle train orders, block or report trains, receive or forward written messages by telegraph, telephone or mechanical telegraph machines, (defined as telegraphers, telephone operators, block operators, operators of mechanical telegraph machines, agent-telegraphers, agent-telephoners) agents, assistant agents, ticket agents, assistant ticket agents and car distributors, listed in appended wage scale, also tower and train directors, towermen, levermen, staffmen, are covered by this Agreement and are hereinafter collectively referred to as employes, and when so referred to all are included."

* * * * *

(2) Station employes at closed offices shall not be required to handle train orders, block or report trains, receive or forward written messages by telegraph, telephone or mechanical telegraph machines, but if they are used to perform any of the above service, the pay at that office for the month in which such service is rendered shall be at the minimum hourly rate for telegraphers as set forth in Article XII of this Schedule. This paragraph applies where either railroad or commercial telephone is used by station or other employes, except in cases of emergency, defined as: train accidents, fires, wash-outs, personal injuries, main line obstructions or engine failures.

NOTE: Interpretation dated July 25, 1942 appended."

The following Memorandum of Agreement is likewise in effect:

"MEMORANDUM OF AGREEMENT

As to Application of
Paragraph 2 of Article I, also Article XIII,
Telegraphers' Schedule Agreement
Dated May 16, 1928, as Amended,
With Respect to Emergency Telephones.

1. The term 'emergency telephone' is construed for the purpose of this agreement to mean a telephone ordinarily kept under lock and key at fixed locations for use in emergencies, and commercial telephones when used in lieu of an emergency telephone.

2. The term 'emergency' is construed to mean train accidents, fires, washouts, floods, personal injuries, main line obstructions, engine failure, train equipment failures, broken rails and failures of block signals or other fixed signals, which could not have been anticipated by dispatcher when train was at previous telegraph office which would result in serious delay to trains.

3. If emergency telephones are used contrary to provisions of Paragraphs 1 and/or 2 of Article I of Telegraphers' Schedule Agreement, except in case of emergency as defined in Paragraph Two (2) of this Agreement, employes covered by Telegraphers' Schedule Agreement shall be paid as follows, provided claims are submitted within thirty (30) days of date of occurrence:

(a) At stations or locations between stations where there is no occupied position covered by Telegraphers' Schedule Agreement, one day's pay to senior idle extra telegrapher of that date.

(b) At stations where agent-telegrapher or telegraphers are employed and not on duty, a call as defined in Article II, Paragraph Seven, to agent-telegrapher or telegrapher whose hours of service converge nearest with the time violation occurred.

(c) At stations where no telegraph service is maintained but there is a non-telegraph agent, or there are non-telegraph towermen employed, non-telegraph agent shall receive telegrapher's rate applicable at such station for the month in which such violation occurs, or towermen whose hours of service converge nearest with the time violation occurs shall receive telegrapher's rate applicable at such tower for the month in which such violation occurs.

4. It is agreed following usage of emergency telephones shall not be considered a violation of this agreement or Telegraphers' Schedule Agreement.

(a) Installation of emergency telephones at any place in absolute permissive block territory or in centralized traffic control territory and their use by trainmen or enginemen to obtain verbal authority to pass automatic block or interlocking signals in a restrictive position.

(b) Use of emergency telephones by trainmen or engine-men at junction points to report arrival or departure or request permission to occupy main track."

Argument is advanced by the Organization that such use of the emergency phone at Rook was not within the allowed uses other than emergency as set out in paragraph 4 of the Memorandum of Agreement and as such violated the terms of the Memorandum of Agreement allowing submission of this claim under paragraph 3 thereof.

The telephone at Rook was an emergency telephone as defined by the Memorandum of Agreement, to be used in emergencies as outlined in paragraph 2, and with specific exceptions as outlined in paragraph 4. But why these specified exceptions and are only these specified exceptions allowed?

It is the opinion of the Board that the exceptions were incorporated in paragraph 4 to allow exception of those certain non-emergency uses necessary to safety under the specified fact situations which otherwise would be violations of the Scope Rule of the general Agreement. As to any other restrictions on the use of the said telephones, none appears in the Memorandum of Agreement, thereby neither broadening or narrowing the general rule of use which appears in paragraph 3, referring back to Article I, paragraphs (1) and (2) of Telegraphers' Schedule Agreement.

Since no argument has been offered that the subject telephone message was a train order, a block or train report, the issue becomes whether or not this transmission was a "written message" within the intent and terms of the Agreement.

Various sustaining awards of this Board have been cited, including 5871, 5872, 8183, 12639, 12640, 12641 and 13956, in which various messages were held to be violative of the Agreement, but in each instance the Board found the messages to involve train orders, "line-ups", or train reports and thus within specifics of Article I. Such is not here the case.

It is alleged that when the telephone message was received at Springfield it was reduced to writing and passed to the dispatcher, but this Board has held in Award 12615:

"The mere fact that a message is reduced to writing does not, by itself, constitute a communication of record."

It is argued that if the call was of the type or importance that would justify becoming a communication of record, that if on the basis of the call action was taken, then the Board should assume that it constituted a "communication of record." The record herein, however, is devoid of proof which would allow such conclusion, and, in fact, reveals that the last "action" taken in regard to car SFRD3859 was the communication to train No. 42 prior to the subject call.

The parties hereto have admitted occurrence of the subject call, but the call as worded does not fall per se into the class of written messages. It is axiomatic that the burden of proof is on the Claimant party and the Organization here offers only the unsupported assertion that the call should be so classified. Such assertion is not persuasive.

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 Agreement has not been violated.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1966.