Award No. 14416
Docket No. TE-13337

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (Coast Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway Company, that:

1. The Carrier violated the Agreement between the parties when, on December 20, 1959, it required or permitted an employe at Rivera, California, not covered by said Agreement to perform telegraphic communications work covered thereby; and

2. The Carrier shall now be required to pay W. A. Brady the equivalent of a "call" payment at the established rate of his regularly assigned position.

EMPLOYES' STATEMENT OF FACTS: Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

The Carrier maintains a telegraph office at Hobart, California, in which telegraphers are employed around-the-clock. On December 2, 1959, the Carrier issued the following instructions to the telegraph employes at Hobart, California:

"You will receive over the teletype information as to car numbers, contents and destinations of cars for Rivera-Bandini, this being identical to the information that you are now receiving for the cars which set out at Hobart.

Upon receipt of this information, you will call the information via telephone to our forces at the Ford Yard office at Rivera, Telephone CX 2-7741, giving them the train, car numbers, contents, consignees and any other information necessary."

The Carrier maintains a one-man Agency at Rivera, California, in which an employe covered by the Telegraphers' Agreement is employed on first shift seven days a week.

graph at Hobart Yard Office was simply a substitute for messenger service between the telegraph office at Hobart and the Ford Yard Office.

Yours truly,

/s/ L. D. Comer"

The claimant, W. A. Brady, referred to in Item 2 of the Employes' claim, was the occupant of a Telegrapher-Clerk position at Hobart, the assigned hours of which were 8:00 A. M. to 4:00 P. M., Tuesday through Saturday, rest days Sunday and Monday. Mr. Brady did not perform service on December 20, 1959, which was Sunday, and one of his rest days.

OPINION OF BOARD: The crucial question in this case is whether a telephonic communication which occurred on December 20, 1959, constituted a communication or message of record. If so, Carrier erred in allowing a non-telegrapher employe to receive the message or in not having it confirmed by wire. If not, there was no Agreement violation.

The basic facts on which a determination must be predicated may be summarized as follows:

1. Carrier's Los Angeles Division contains the Rivera Agency. One station employe, an Agent-Telegrapher, is employed at this Agency which serves eight or nine small industries in the immediate vicinity.

2. Not far from the Rivera Agency Carrier maintains the Ford Yard Office, which is under the general supervision of the Agent in charge of the Los Angeles Agency. Three employes covered by the Clerks' Agreement work at this office. The office is situated in the so-called Vail-Bandini area which lies, generally, between Rivera station and Hobart Yard (a part of Los Angeles Yard). There are over 64 industries located in this area, of which Ford Motor Company is one of the largest. These industries are served by the Los Angeles Agency, not the Rivera Agency. A Trainmaster supervises switching for these industries.

There is a commercial Bell telephone in the Ford Yard Office which is regularly used by the Trainmaster and clerical employes for discussions with representatives of the industrial firms in the area, with the Agent in charge of the Los Angeles Agency, and with other Los Angeles station supervisors or employes in numerous offices contained in the Los Angeles Agency.

3. Carrier maintains a Terminal at San Bernadino, about sixty miles from Los Angeles.

4. Carrier maintains a Telegraph office at Hobart Yard — part of the Los Angeles Yard — about six miles from the Ford Yard Office.

5. At an unspecified date, Ford Company asked Carrier to supply it with advance information regarding the contents of carload shipments destined for the Ford plant. This information was to be used by Ford in scheduling its assembly operations, the efficiency of such operations being largely dependent upon a continuous supply of parts and materials from the East. Carrier was able to furnish the requested information, since it maintains a constant record of carload shipments as they move from Terminal to Terminal.

6. Carrier arranged to have the information developed from passing records at the San Bernadino Terminal and communicated to Ford by Los Angeles Station employes assigned to the Ford Yard Office. Initially, a clerical employe at San Bernadino telephoned the information to a clerical employe at the Ford Yard Office, using commercial long distance Bell Telephone. There is no indication in the record that Petitioner protested this procedure, nor is it revealed how long the procedure was followed.

7. On December 2, 1959, Carrier's Los Angeles Terminal Superintendent instructed telegraph personnel in the Hobart Yard Office as follows:

> "You will receive over the teletype information as to car numbers, contents and destinations of cars for Rivera-Bandini, this being identical to the information that you are now receiving for the cars which set out at Hobart.
>
> Upon receipt of this information, you will call the information via telephone to our forces at the Ford Yard office at Rivera, Telephone OX 2-7741, giving them the train, car numbers, contents, consignees, and any other information necessary."

Thereafter, the following procedure was followed: (1) A telegrapher at San Bernadino teletyped the information to a telegrapher at the Los Angeles Hobart Yard Office; (2) a telegrapher in the Hobart Yard Office telephoned the information, using commercial Bell Telephone, to a clerical employe in the Ford Yard Office; (3) the clerical employe made a pencilled notation of the information and telephoned it to Ford. No permanent record was made of this information at the Ford Yard Office.

8. During the two months following adoption of the above-described procedure, Petitioner submitted forty-one claims protesting the alleged assignment of telegraphic communication work to employes not covered by its Agreement. One of these — the case at hand — was processed to the Board for final resolution; the others have been held in abeyance.

9. The claim before us (on behalf of a Hobart Telegrapher who was off duty but available for service) is based on this December 20, 1959 telephonic communication from a Hobart Telegrapher to the Ford Yard Office:

> "Setout List San Bdno, Calif., 9:46 P. M. Dec 20
> To Agent Hobart for Rivera
> BA-43-Q 218 Brewer 10:45 P Dec 20.
> AT 11089 Brass Bridgeport
> SP 215656 Machy Contl Can
> CNW 56178 Parts Ford
> NYC 40751 Same
> AT 10313 Same
> NYC 79548 Same
> MILW 16025 Same
> SOU 262987 Same
> DTI 13000 Same
> ERIE 66739 Same
> MP 86843 Same

MP 38686 PREPS VONS Groc.
CBA 20114 Tires Goodyear
ACL 14053 Plywood Diamond W Supp
AT 2887 Steel Jones Laughlin
GN 47083 Towels Vons Groc.
PFE 68234 Studs Same
NYC 69142 Plastic Monsanto
Total 18 Loads 1018 Tons.
END."

It will be noted that nine of the eighteen listed cars were for Ford. The record does not reveal the purpose of relaying information on the other cars or what the Ford Yard Office did with such information. As noted, the communication in question contains information on the train number, locomotive number, departure time San Bernadino, Conductor's name, identification of contents and destination of each car, and total weight.

In determining whether this December 20 communication was a message of record, as that term is understood by the parties, perhaps the most relevant source of information consists of Board decisions involving these parties. There have been at least twenty such Awards, extending from 1938 to 1965, which have been carefully reviewed, including Awards 603, 604, 645, 1281, 1284, 1303, 1563, 1752, 1791, 10364, 10763, 10767, 10777, 11727, 12965, 13303, 13730 and 13731.

Briefly stated, these Awards have found that the following types of communications constituted messages of record (reserved for the Telegrapher craft except under certain circumstances):

1. A telephoned slow order cancellation which caused a train order to be issued annulling a prior train order (which, in turn, permitted certain trains to operate at normal speeds during a given period (Award 13730).

2. A "wheel report" communication which contained information necessary to the operation of the train (Award 12965).

3. A lineup obtained for a conductor (Award 11727), receiving lineups (Awards 1791, 1752), regularly securing lineups or positions of trains (Award 1281–1284 and 604).

4. Telephone calls containing (1) instructions to repair a swing joint on a train, (2) information about a possible need for repairing a unit on a diesel, and (3) an engine lineup (Award 10777).

5. A "car tracer" communication; e.g., a conversation, the subject of which was to trace certain cars in the "accepted car-tracer fashion" (Award 10767).

6. A telephonic communication containing (1) information that a dead man's pedal on a diesel engine of a particular train had been cut out at one location and should be repaired at

another, and (2) a list of diesel locomotives then lined up to be used out of a particular location on specified Passenger and Freight Trains.

7. A message containing (1) instructions for a Signal Maintainer regarding a signal line break, and (2) a train lineup (Award 1563).

Awards on this property have held, on the other hand, that these types of communication did not constitute messages of record exclusively reserved for the Telegraphers' craft:

1. A telephoned message (from a clerk to an operator) in an emergency situation where a train was running without headlights (Award 13731).

2. A radio-telephone communication from a Yardmaster to a train seeking its location on the line; receipt by him of a message from the Train Crew; and a return message to set out a number of cars (Award 13303).

3. Telephone conversations regarding bootlegger truck operations (Award 10763).

4. A telephone call (by a timekeeper or extra gang foreman) at a closed station requesting an operator to send a message concerning work of the extra gang (Award 645).

5. An occasional box telephone call from section foremen at a blind siding and other outlying locations where no operator is available to communicate with operators or their supervisors (Award 603).

The general import of these Awards has been that communications which govern or affect the movement of trains over the line, or which affect the safety of persons or property, have been required to be matters of formal record. Award 10767 is a rather boarder line case, in this respect, but it is significant that the Board, in that case, found an "existing practice" under which car tracer messages were mutually considered to be messages of record and handled accordingly.

What, then, of the December 20 message in the case at hand?

There is no evidence of a mutually accepted practice — as in Award 10767 — which recognized communications of this kind to the Ford Yard Office as messages of record. (As a matter of fact, there is some evidence that communications containing similar information had previously been transmitted directly from San Bernadino to the Ford Yard Office without use of Telegraphers and without protest by the Organization.)

In applying the general criteria which have been used in related cases, to the facts here, it is notewrothy that the communication did not govern or affect the movement of trains over the road, nor did it affect the safety of persons or property. There was no need to make a record of the message. The railroad's operations were in no way dependent upon transmission or

receipt of this communication. No decision by railroad employes or supervisors rested on the message. No action affecting the railroad was taken as a result of receiving the information nor, presumably, would any of Carrier's actions have been different had the information not been passed along. Although the contents of the message duplicated a prior message (San Bernadino to Hobart) which, it is acknowledged, was covered by the Telegraphers' Agreement, that fact, of itself, is not sufficient to establish that, during its re-transmittal to Ford Yard for the limited purpose of supplying the Ford Company with certain useful information, it also constituted a message of record.

Under the circumstances, the claim will be denied.

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 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 12th day of May 1966.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.