

Award No. 14843
Docket No. TE-13044

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago and St. Louis Railroad, that:

1. The Carrier violated the terms of an Agreement between the parties hereto when commencing September 22, 1960, it established three (3) telephone offices at Hadley, Indiana, filled the positions thereat with train service employees who hold no rights under the parties' Agreement and thereafter permitted or required these outside employees to perform telephone communication work reserved to employees coming within the scope of the Telegraphers' Agreement.

2. The Carrier shall, because of the violation set out above, for each work day Monday through Friday, commencing September 22, and terminating November 10, 1960, the date upon which the continuity of the violation ended, compensate three (3) idle extra telegraphers entitled to perform the work a day's pay (eight hours) at the minimum rate of the division. On such day or days when no idle extra telegraphers are available, the Carrier shall compensate the following regularly assigned employees idle and available on their respective rest days eight (8) hours in accordance with the rest day rules:

- (a) C. Day, R. Neff and C. Green for each Monday.
- (b) C. Day, P. Hall, and V. Winebrenner for each Tuesday.
- (c) P. Hall, G. Gillis, and V. Winebrenner for each Wednesday.
- (d) G. Gillis, R. Hill, and J. McKinney for each Thursday.
- (e) J. McKinney, W. Ackerman, and R. Hill for each Friday.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective January 1, 1959, and as otherwise amended.

employed at Hadley. The operations described above were handled as indicated on a total of 28 days during the period covered by the claim, i.e., the period September 22 through November 10, 1960.

The claim here in dispute was initiated by the Employees' General Chairman in letter dated October 27, 1960, copy of which is attached as Carrier's Exhibit A. In this letter the General Chairman set out what he identified as examples of "communications, obtained on a day at random, September 23, 1960", allegedly transmitted via the company telephones in connection with the flagging operation. The Carrier is unable to either challenge or confirm the authenticity of these purported conversations since no written record of any nature was kept of any of the discussions.

The handling of the claim on the property was as follows:

- Carrier's Exhibit B — November 8, 1960 — Denial of claim — Superintendent to General Chairman.
 - Carrier's Exhibit C — December 5, 1960 — Appeal — General Chairman to General Superintendent.
 - Carrier's Exhibit D — February 2, 1961 — Denial of Appeal — General Superintendent to General Chairman.
 - Carrier's Exhibit E — February 10, 1961 — Appeal — General Chairman to Director of Personnel.
 - Carrier's Exhibit F — March 8, 1961 — Denial — Director of Personnel to General Chairman.
 - Carrier's Exhibit G — March 21, 1961 — Affirmation of Denial — Director of Personnel to General Chairman.
 - Carrier's Exhibit H — May 19, 1961 — Letter — General Chairman to Director of Personnel, rejection of Carrier's decision.
 - Carrier's Exhibit I — May 31, 1961 — Letter — Director of Personnel to General Chairman, challenging certain statements contained in letter of May 19, 1961.
 - Carrier's Exhibit J — June 27, 1961 — Letter — General Chairman to Director of Personnel, affirming rejection of Carrier's decision.
- (Exhibits not reproduced.)

OPINION OF BOARD: Incidental to the construction of Interstate Highway Route I-69 and specifically in connection with the construction of overhead bridge crossing Carrier's tracks at Hadley, Indiana, a private contractor entered into an agreement with Carrier whereby Carrier constructed a temporary grade crossing at Hadley to be used for the handling of fill dirt across both the eastbound and westbound main tracks in large earth-moving equipment.

The temporary crossing was located between curves in Carrier's main tracks which restricted the view of trains approaching from both directions.

For this reason and account the density and speed of the movements of equipment over the crossing, it was decided to protect the operation with a crew consisting of one conductor and two brakemen. The conductor was stationed at the crossing and a brakeman a sufficient distance in each direction from the crossing to afford flag protection. A telephone was installed at the crossing for the use of the conductor and the brakemen were stationed where trackside telephone boxes were previously located for the use of trainmen and other employees.

Telegraphers contend that Carrier violated the Scope Rule of the Agreement because:

"Instead of assigning telegraph (telephone) service employees to perform the communication work contemplated by the installations, e.g., the copying of train lineups, the blocking of trains, reporting (OS'ing) of trains and other incidental communications of record, the Carrier assigned a conductor to the telephone at the crossing (described above) and brakemen to the telephones located east and west of said crossing."

The only evidence adduced in support of Telegraphers' case is "examples of such communications, obtained on a day at random, September 23, 1960." In his denial of the Claim, Carrier's Superintendent with reference to this evidence replied:

"... while I cannot deny that these conversations may have taken place — there being no form of confirmation in Carrier's files, I decline to accept as authentic or as correct these completely unsubstantiated and undocumented representations."

This put Telegraphers to its proof that the messages were communicated as alleged. It failed to satisfy this burden, and as a result the evidence submitted has no probative value. We will dismiss the claim for lack of proof. Consequently, we do not reach the question as to whether the Scope Rule was 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 Claim fails for lack of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1966.

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