

Award No. 14894
Docket No. TE-12277

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

PANHANDLE AND SANTA FE RAILWAY COMPANY

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

1. The Carrier violated the Agreement between the parties when it requires or permits the foreman and timekeeper of the steel gang at McBride, Texas, employes not covered by said Agreement, to perform work covered thereby; and

2. The Carrier shall compensate the senior idle extra employe the equivalent of a day's pay (eight hours' pay) for each day as long as the violation exists; or

3. If no idle extra employe, the Carrier shall compensate Agent Davis King at Panhandle, Texas, the equivalent of a call (three hours' pay) at the rate of the position he occupies for each day as long as violation exists.

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

From June 23, 1959, to July 13, 1959, inclusive, at McBride, Texas, located between Panhandle, Texas, and Borger, Texas, the foreman and/or timekeeper of a steel gang, an employe not covered by the Telegraphers' Agreement, daily, transmitted messages concerning working limits and slow orders to the train dispatcher by the use of the telephone, as evidenced by the following examples of slow orders transmitted by Foreman McCabe to the train dispatcher on dates indicated:

June 23, 1959:

"Place the following order in effect from 8:30 A.M. to 4:00 P.M. tomorrow 6-24-59 have all trains approach gang working be-

The Employees have neither furnished dates on which the alleged violations are supposed to have occurred nor the names of the person or persons whom they consider to be entitled to the penalties claimed, but have named Davis King, who was the occupant of Agent-Telegrapher Position No. 2060 at Panhandle, as a secondary or alternate claimant. Except for a position of telegraph apprentice, Agent-Telegrapher Position No. 2060 was the only position on the station payroll at Panhandle. The details of that position's assignment were as follows:

Pos. No.	Occupation	Rate of Pay	Assigned Hrs. From To	Rest Days	Rest Day Protection	Meal Period
2060	Agent-Telegrapher	\$2.67 Hr	7 AM 4 PM	Sat	Accumulate 1 hour Relief Position 9022	
				Sun	None	

OPINION OF BOARD: A steel gang foreman telephoned a Dispatcher and reported where his gang would be working the following day. The call was made from a blind siding where no telegraphers are employed. On the basis of the information given to him by the foreman, the Dispatcher issued slow orders. The next morning the timekeeper, attached to the gang, filed confirming wires with the Agent-Telegrapher on duty at Panhandle, Texas. Employees claim that the foreman and the timekeeper performed work which belongs to employees covered by the Telegraphers' Agreement. The issue is whether the telephone conversation was a communication or message of record.

A communication or message of record is one which affects the movement of trains, or one which affects the safety of persons or property. The telephone message from the foreman to the dispatcher is neither a train movement nor a message which involves the safety of persons or property. While it is true that the slow order issued does involve the safety of the gang, the telephone message, as such, did not issue the slow order. The Dispatcher, who is permitted to do so, actually issued the communication of record. See Awards 12618, 12383, 13742, 14533 and 14534.

Employees also urge that by past practice this type of communication has been held to be a message of record. The fact that the Carrier has settled claims arising from the telephone conversations does not ipso facto constitute a past practice which validates this claim. Those claim settlements listed in Employees' Ex Parte Submission are not precedents because they do not emanate from the same set of circumstances that exist here. No claim settlement, identical with the facts upon which this claim is predicated, has been produced.

The several Awards, with the same Referee, cited by the Employees are easily distinguishable and are not applicable to the claim at hand.

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 28th day of October 1966.