

Award No. 1552
Docket No. TE-1385

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

E. L. McHaney, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY CO.**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Cleveland, Cincinnati, Chicago & St. Louis Railway, that the Carrier violated the Telegraphers' Agreement by requiring or permitting employees attached to Extra Gang 233, who were not under said agreement, to regularly receive and transmit communications of record daily by the use of a portable telephone while the gang was engaged in removing or relaying rails with a 'Burro Crane,' which crane blocked the main track when working and which was, by the use of portable telephone, kept practically in touch with the train dispatcher while working; and that the senior extra telegrapher, idle and available on each day this arrangement was in effect, be paid a day of eight hours at the minimum telegrapher's rate for the division (66 cents per hour) as the telegrapher who should have been used to perform this service."

OPINION OF BOARD: From October 6 to November 7, 1939, both inclusive, Sundays excepted, the Carrier used a portable telephone in connection with the operation of a self-propelling Burro Crane on the main track between Worthington and Petersburg, Indiana, to receive and transmit communications of record, such as train line-ups, distribution of labor reports, progress of trains, etc., directly with the dispatcher, which telephone was used by the foreman and other employees of Extra Gang 233.

It is the contention of the Employees that such use of said telephone by the foreman and others, who are not under the Telegraphers' Agreement, is work covered by and coming within the scope of said Agreement; that such telephone so used in communications service constituted a telephone office within the meaning of said Agreement, and that the senior extra telegrapher who was idle during such period should have been assigned to perform the service and paid for the time denied him.

The Carrier denies that the portable telephone was "installed" on the crane, that it was used daily and that messages and reports of record were handled in its use. It admits that it was on the job (between stations) "for conversational purposes but there is no exact record of its usage." It is, therefore, its position that the Agreement was not violated.

"In our opinion it is established that the foreman and others of the Extra Gang did use the portable telephone for the purpose of sending and receiving information of record, such as line-ups of trains, distribution of labor reports, progress of trains, etc., all of which work is of the class that comes within the scope of the Telegraphers' Agreement, and that the senior idle telegrapher should have been assigned to perform this service. See Awards 604, 1220, 1224, 1303, and 1535.

The record does not show the exact number of days this portable telephone was used in the work stated and we cannot make any money award for this reason.

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 will be allowed for every day the Agreement was so violated and will be remanded to the parties to determine the exact number of days and the amount due the senior idle telegrapher at the correct rates of pay.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of August, 1941.