Award No. 15555
Docket No. TE-14060

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad, that:

1. Carrier violated the Agreement between the parties when on January 21, March 22 and 26, 1962, it required or permitted an employe not covered by said Agreement at Amarillo, Texas yard office, to transmit by telephone to the Chief Dispatcher at Liberal, Kansas, matters of record pertaining to train movements.

2. Carrier shall be required to compensate R. M. Goodwin, senior telegrapher off at Amarillo at the time of each violation one call for each day January 21, March 22 and 26, 1962.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective August 1, 1947 (reprinted to include interpretations and Special Agreements to November 1, 1956), as amended and supplemented, is available to your Board and by this reference made a part hereof.

At Amarillo, Texas, Carrier maintains a yard office and a passenger station. The two buildings are located a few blocks eapart. The yard office is open continuously with the usual complement of yard employes, including yard clerks. There are no positions at the yard office covered by the Telegraphers' Agreement. There are two positions at the passenger station covered by the Telegraphers' Agreement, with assigned hours as follows:

First Shift — 7:00 A. M. to 3:00 P. M.
Second Shift — 6:00 P. M. to 2:00 A. M.

Both of the above are seven day positions and are relieved on rest days by a regular relief employe. R. M. Goodwin is regularly assigned to the first shift position and was the senior employe at Amarillo off duty, at the time of the violations of the Agreement contained in the claims encompassed in this dispute.

At 4:40 A. M. outside the hours of either telegraph service employe, on January 21, 1962, the yard clerk at Amarillo, an employe not covered by the

"May 11, 1962
File: L-123-855

Mr. G. W. Christian
General Chairman, ORT
6314 Brookside Plaza
Kansas City 13, Missouri

Dear Sir:

This has further reference to your file 145-264 and my letters of April 19 and May 1, 1962 and conference held here April 18, 1962 in connection with your appeal of claims for a call each on January 21, March 22 and 26, 1962 at Amarillo account alleged matters of record telephoned by Trainmaster-Agent and yard clerks.

In the first paragraph of your letter dated May 7, 1962, you stated instructions issued by J. F. Orlomoski, Superintendent, were issued due to my alarm over the sustaining Award 8358 of the NRAB. To this let me say, the fact that I was alarmed over the Third Division decision contained in Award 8358 is certainly no secret. However, as I have stated to you in various conferences many times, the instructions issued by the Division Superintendent do not reflect this office's (Carrier's) position concerning this matter nor did they have my concurrence at the time of issuance nor do they constitute an agreement between the ORT and this Carrier.

As I have repeatedly stated to you in handling cases of this nature, there is absolutely no contract support for your contentions. For as many years as we have had communications, other than telegraph, officers as well as other employes of different crafts have used and continue to use the telephone, radio, etc., to exchange information such as this within an office or from one office to another office, or from one station to another station, from a train to a base station, from a pole box phone to an office or station, from one train to another train, etc. Certainly, you cannot expect the NRAB to write a new rule, or interpret our present agreement to the extent you have indicated when in fact there is simply no basis or justification for such unrestricted handling.

Further, let me say, there are absolutely no Carrier rules requiring that the conversations you have noted here be made a matter of record, and this no doubt accounts for your failure to cite such a rule or requirement. Until such a requirement or rule is in evidence 'messages, orders and reports of record' as contemplated by Interpretation No. 4, Supplement 13 of General Order No. 27, and a long line of awards based on that interpretation following, cannot be constructed with any other basis than a sole contention by you that certain conversations should be considered as such.

Yours truly,

/s/ G. E. Mallery"

OPINION OF BOARD: It is argued in behalf of Petitioner that the question at issue in this case — involving these same parties and locale —

has been decided in at least four prior awards of this Division: Nos. 3199, 8358, 12307, 12308. They were sustaining Awards. In fact, Award 3199 was decided by the Board without a Referee. While Award 8358 drew a dissent from the Carrier members, the most recent Awards involving the same issue and parties were adopted without dissent.

It is argued in behalf of Petitioner that a comparison of Carrier's ex-parte submission in this Docket TE-14060 with its submissions in Awards 12307 and 12308 "shows them to be identical in construction."

It should be noted the uses of the telephone here subjected to claim occurred during the hours of 3:00 P. M., to 6:00 P. M., and from 2:00 A. M. to 7:00 A. M., when the telegraph office is closed.

The first use of the phone here involved occurred January 21, 1962 when the Yard Clerk phoned the Chief Dispatcher to give him an OS on Train 997 into Amarillo and also the number of loads and empties of each train, and when it would run.

The second occurrence took place at Amarillo when the Yard Clerk phoned the Chief Dispatcher and transmitted information respecting a derailment.

We believe both of these incidents can be classed as information relating directly to the movement of trains, and were violations of the agreement.

However, the use of the telephone on March 26 related to the assignment of crew personnel and was not directly related to the movement of trains. It was not a violation of the agreement.

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 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 violated.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1967.

CARRIER MEMBERS' DISSENT TO AWARD 15555, DOCKET TE-14060 (Referee Lynch)

For reasons known to the majority, we dissent.

G. L. Naylor
R. E. Black
T. F. Strunck
P. C. Carter
G. C. White

RESPONSE TO CARRIER MEMBERS' DISSENT TO AWARDS 15555, DOCKET TE-14060 AND 15556, DOCKET TE-14766

The undersigned members of the majority which adopted Awards 15555 and 15556 have no knowledge of any reason for the Carrier Members' dissent.

J. W. Whitehouse
C. R. Barnes
George P. Kasamis
C. E. Kief
Gerald Orndorff

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