



Award No. 15686
Docket No. TE-14605

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Louisville and Nashville Railroad (NC&StL District), that:

1. Carrier violated the terms of an Agreement between the parties hereto when at 2:05 P.M., October 2, 1962, it required or permitted one Mrs. Jefferies, an employe outside the scope of said Agreement in the General Foreman's office at Wauhatchie Yard, Tiftonia, Tennessee, to receive a message over the telephone transmitted by one Mr. Miller, Huntsville, Alabama.

2. Chief Dispatcher Hutton's decision dated November 21, 1962 was not in compliance with the requirements of Article V, Section 1(a) of the May 20, 1955 Agreement.

3. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate the senior idle telegrapher, extra in preference, on the Chattanooga Division, a day's pay at the minimum telegraphers' rate for the division.

4. Carrier shall, because of the violation set out in paragraph 2 hereof, allow the claim as presented.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective September 1, 1949, and as otherwise amended. Copies of said Agreement are, as required by law, assumed to be on file with your Board and are, by this reference, made a part hereof.

At or about 2:05 P.M. on October 2, 1962, one Mr. Miller, an employe not covered by the parties' Agreement, came in on the telephone at Huntsville, Alabama, and transmitted the following message to one Mrs. Jefferies, also an employe not covered by the parties' Agreement, in the General Foreman's office at Wauhatchie Yard, Tiftonia, Tennessee:

"LOUISVILLE AND NASHVILLE RAILROAD COMPANY

Office of Director of Personnel

Louisville, Kentucky

September 20, 1963

B-749

Mr. W. E. Yates
General Chairman (NC&StL District)
The Order of Railroad Telegraphers
107 Vermont Street
Ringgold, Georgia

Dear Sir:

This refers to your letter of September 14, regarding claim in behalf of senior idle telegrapher, extra in preference, Chattanooga Division, for eight hours' pay October 2, 1962, based on the contention that Mrs. Jeffries, secretary to the General Foreman, Wauhatchie, allegedly received and copied a matter of record over the telephone.

This claim was appealed to this office by former General Chairman Warren January 31, 1963, based on the contention that Carrier violated Article 1 of the Telegraphers' Agreement when it required or permitted Mrs. Jeffries to perform duties of an operator by receiving and copying an alleged matter of record over the company telephone. No contention was made in the appeal of alleged non-compliance with provisions of Article V of the May 20, 1955 agreement (Time Limit Rule).

Your belated contention in this respect is therefore not in order and is barred by the provisions of the Time Limit Rule.

Yours truly,

/s/ W. S. Scholl
Director of Personnel"

* * * * *

On August 30, 1957, by authority of the Interstate Commerce Commission, in Finance Docket 18845, The Nashville, Chattanooga and St. Louis Railway was merged into the Louisville and Nashville Railroad Company.

The working agreements between each of the railroads and its telegraphers have, to date, been continued in effect. The L&N agreement is applicable to those employees on what is known as the "L&N District," former L&N territory. The NC&StL agreement is applicable to what is known as the "NC&StL District," former NC&StL territory.

Copies of the applicable NC&StL telegraphers' agreement, which became effective September 1, 1949, are on file with this Division.

OPINION OF BOARD: On November 6, 1962, Petitioner presented a Claim to Carrier's officer authorized to receive it which contained a statement

of facts which it alleged constituted a violation of specified Article of Telegraphers' Agreement. The officer acknowledged receipt of the Claim on November 21, 1962 and stated: "We do not find support for the claim, and it is respectfully declined." This response, Petitioner contends, did not satisfy Article V, Section 1(a) of the May 20, 1955 Agreement because no "reasons for such disallowance" were given. Citing the same Article Petitioner prays that we sustain the Claim as presented.

Article V is not concerned with the merits of reasons given. Its objective is to have a carrier specify its defenses as a matter of record which an Organization can rebut in conferences on the property. Further, the carrier is confined to these specified defenses when a dispute comes before this Board for adjudication.

In the instant case the reason given for disallowance is in the nature of a demurrer. What Carrier has said in effect is: "We have studied your claim. It does not make out a prima facie case of violation of the Agreement. We put you to your proof." We find this satisfies "reasons" within the contemplation of that term in Article V. Therefore, we proceed to consideration of the case on the merits.

On October 2, 1962, Carrier's agent, W. C. Miller, located in Huntsville, Alabama, attempted to communicate by telephone with the General Foreman, Wauhatchie Yard, Tiftonia, Tennessee, for the purpose of discussing his requirement for supplies. The General Foreman being out of the office at that time Miller spoke to a Steno-Clerk, told her what he needed, she made a note for the attention of the General Foreman. Petitioner contends that the function performed by the Steno-Clerk violated the Scope Rule of its Agreement.

The Awards of this Board have firmly established that the use of a telephone for communication is not exclusively reserved to Telegraphers.

The Scope Rule is general in nature. This being so Petitioner had the burden to prove that the message here complained of was of a kind which Telegraphers had, historically, exclusively transmitted on Carrier's property. It failed to satisfy that burden. We, therefore, will dismiss the Claim.

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 Claim must be dismissed for failure 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 30th day of June 1967.

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