

Award No. 15916
Docket No. TE-14747

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Soo Line Railroad, that:

1. Carrier violated the Agreement between the parties when on October 22, 29, and November 5, 1962, it required or permitted the Section Foreman at Exeland, Wisconsin, to handle lineup at a time the Agent-Telegrapher at that station was not on duty.
2. Because of this violation Carrier shall compensate J. J. Jasek, Agent-Telegrapher at Exeland, Wisconsin, in the amount of a call allowance for each day October 22, 29, and November 5, 1962.
3. Carrier violated the Agreement between the parties when on April 9 and 10, 1963, it required or permitted the Section Foreman at McLeod, North Dakota, to handle train lineups.
4. Because of this violation Carrier shall compensate the senior idle extra Telegrapher, but if no idle extra Telegrapher, the senior regular assigned Telegrapher on rest day employed nearest to McLeod, on April 9 and 10, 1963, respectively, in the amount of a day's pay for each day, April 9 and 10, 1963.
5. Carrier violated the Agreement between the parties when on April 25 and 26, 1963, it required or permitted the Section Foreman at Valley City, North Dakota, to handle lineups at that station.
6. Because of this violation Carrier shall compensate the senior idle extra Telegrapher, but if no idle extra Telegrapher, the senior regularly assigned Telegrapher on rest day employed nearest to Valley City, on April 25 and 26, 1963, in the amount of a day's pay for each day, April 25 and 26, 1963.
7. Carrier violated and continues to violate the Agreement between the parties, whom on February 18 (twice), 19, 20, 21, 25

(twice), 26, 27, 28, March 1, 4 (twice), 5, 6, 7, 8, 11 (twice), 12, 13, 14, 15, 18 (twice), 19, 20, 21, 22, 25 (twice), 1963, it required or permitted the Section Foreman at Gordon, Wisconsin, an employee not covered by the Agreement, to handle lineups at that station at a time the Agent-Telegrapher was not on duty.

8. Because of this violation Carrier shall compensate C. T. Smith, Agent-Telegrapher at Garden, Wisconsin, (or his successors) in the amount of 31 calls (one for each instance named above) and one call for each similar violation subsequent to March 25, 1963.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective July 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Paragraph 8 of Statement of Claim contains a typographical error. Please correct the word "Garden" as shown therein to read "Gordon."

This dispute embodies four claims which were handled separately on the property. For convenience the four claims are combined in this submission. All four claims arose out of Carrier's action of requiring or permitting Section Foremen, who are not subject to the Agreement, to handle lineups.

All the claims involved in this dispute were filed and handled in the usual manner, up to and including the highest officer of the Carrier, and have been denied. Paragraphs 1 and 2 of Statement of Claim refer to the violations of the Agreement which occurred at Exeland, Wisconsin. Paragraphs 3 and 4 of Statement of Claim refer to the violations at McLeod, North Dakota, Paragraphs 5 and 6 at Valley City, North Dakota, and Paragraphs 7 and 8 at Gordon, Wisconsin. We shall discuss separately the facts and circumstances surrounding the claims at each of these locations.

Exeland, Wisconsin is a one-man station at which is employed an Agent-Operator with hours of assignment of 9:00 P. M. to 6:00 A. M. (one hour for lunch) Monday through Friday. The rest days of the Agent-Operator at Exeland are Saturday and Sunday. Prior to October 22, 1962, the Agent-Operator worked Passenger Train No. 3 on a call basis on Monday mornings (due at Exeland at 4:15 A. M.), and at the same time, handled lineup for the Section Foreman. Effective on October 22, 1962, the Monday morning call for the Agent-Operator was eliminated. On October 22, 29, and November 5, 1962, the Section Foreman at Exeland handled lineup for himself by copying and receiving same from the Operator on duty at Ladysmith, Wisconsin who had received such lineups from the Train Dispatcher. The claim presented as a result of these violations of the Agreement is depicted in Paragraphs 1 and 2 of Statement of Claim. Handling of the case on the property is shown in ORT Exhibits 1 through 11, attached hereto and made a part hereof.

McLeod, North Dakota (please see Paragraphs 3 and 4 of Statement of Claim) is a place where no Operator is employed. However, prior to April 27, 1962, an Operator was employed at that station and performed all the communication work thereat, including the handling of lineups. Since April 27, 1962, the Section Foreman at McLeod has usually handled his necessary lineups by copying same from the Agent and Operator at Wyndmere, North Dakota who obtained such lineups from the Train Dispatcher and relayed them to the Section Foreman at McLeod. However, on May 6, 1963, the Section Foreman at

April 1, 1945, the rules were modified to provide that employees operating track cars were to "obtain information in writing regarding trains when practicable," and on August 12, 1945, Form 386, Train Location Report, was put in use. "Practicable" was interpreted to mean that an operator was employed and on duty, and motor car operators continued their practice of obtaining lineups through alternate methods at all other times.

Copies of schedule agreement between the parties to this dispute, effective July 1, 1956, and supplements thereto are on file with the Board and are made a part of this record by reference.

OPINION OF BOARD: The scope rule here involved is broad in nature, in that it sets forth only the positions covered thereby and does not list items of work as such.

The claims made by Organization, while covering several locations, can be categorized as claims against non-telegraph employees securing track car lineups at the several points involved by use of the telephone when an operator or agent was not on duty. For example, during the periods that there was only night agency service the agent would secure morning lineups before going off duty and leave them to be picked up later by the Section crew. Noon lineups were obtained by the section foremen by phone directed from the dispatcher's office. This practice, Carrier points out, continues until July 18, 1961, when, because of complaints from the Telegraphers' Organization, the section foreman was instructed to get his lineups from the nearest operator on duty.

With this change, Carrier asserts, "no further complaints were forthcoming from the Telegraphers' Organization until the claim before us here was filed for an alleged violation Monday, October 22, 1962."

It is the Carrier's position that the scope rule on this property does not "describe the character of the work encompassed within it, but merely lists the classes of the positions covered. Under such circumstances, the Board looks to past practices to ascertain what work has, by tradition and custom, been considered work "belonging exclusively to telegraphers."

The Carrier takes the position that:

"insofar as this property is concerned, neither schedule rule nor history, custom or practice support the Brotherhood's contention that none but telegraphers may copy train lineups. History, custom and practice, in fact belie the telegraphers' claim that only a member of their craft may properly copy train lineup information."

Award 4320, involving these same parties, was adopted February 17, 1949. In the intervening eighteen years this same issue has come before this Division a countless number of times.

A similar claim was handled before this Board in Award 15169 and a denial Award was issued January 20, 1967.

The same issue of non-telegraph employees transmitting, receiving or handling Track Car lineups was before Referee John H. Dorsey in Award 15687, adopted June 30, 1967.

That claim was dismissed for failure of proof, in this manner:

"The scope rule is general in nature. Therefore, Petitioner had the burden of proving that on the property here involved Telegraphers had, historically, exclusively handled motor car messages. (Award 12356 sets forth the measure of proof required). Award 13442.

'Petitioner has failed to adduce any factual evidence of probative value' that satisfies the burden."

We must and do agree with Award 15687 (Dorsey) and we find the Organization has here failed to prove it has exclusive jurisdiction to the work involved on this property.

We will dismiss this claim for failure of proof.

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 Agreement was not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1967.