



Award No. 15970
Docket No. TE-13989

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

CHICAGO AND NORTH WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Minneapolis and St. Louis Railway Company, that:

1. Carrier violated Rule 1 (Scope) of the parties' Agreement when on March 17, 1962 it required or permitted J. D. Reetz, Section Foreman an employe not covered by said Agreement to transmit communications of record by use of the dispatcher's telephone at Sheffield, Iowa.

2. Carrier shall now compensate Agent-Telegrapher L. Abrams, Jr., one call payment (three hours at straight time rate) at the rate of his position in accordance with the provisions of Rule 10(a).

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective September 1, 1955, and as otherwise amended. Copies of said Agreements are on file with your Board and are by this reference made a part hereof.

At page 67 of said Agreement (Wage Scale) is listed the position existing at Sheffield, Iowa, on the effective date thereof. For your ready reference the listing reads:

Station	Position	Hourly Rate	Overtime Rate
Sheffield	Agent-Telegrapher	\$1.865	\$2.7975

L. Abrams, Jr., hereinafter referred to as claimant, is the regularly assigned agent-telegrapher at Sheffield, Iowa. As such he has assigned hours of 8:00 A. M.-5:00 P. M., with one hour meal period. He has an assigned work week of Monday through Friday, Saturday and Sunday rest days.

Service, duties or operations necessary to be performed at this one-man agency at Sheffield, both within and outside the hours of his assignment, are performed by claimant pursuant to Carrier's work assignment. An integral part of said duties is the transmission and/or reception of communications of record

"Sheffield - March 17
to M. J. Reitan - Minneapolis
H. E. Olson - Hopkins

East house track switch at Rockwell, Iowa, cannot be used.
H. E. Olson please send 1-16-6 right hand 100 pound switch point.

/s/ J. D. Reetz Sec. 8"

"Sheffield - March 17
to H. E. Olson - Hopkins
M. J. Reitan - Minneapolis

Please remove 10 MPH slow order on west house track switch
Rockwell.

/s/ J. D. Reetz Sec. 8"

"Sheffield - March 17, 1962
to M. J. Reitan - Minneapolis

Water over rails on passing track east of Depot Rockwell.
Trains move over slowly account of may be frozen tonight.

/s/ J. D. Reetz Sec. 8"

By letter dated June 6, 1962, a copy of which is attached as Carrier's Exhibit A, claim was appealed to the Carrier's Director of Personnel in behalf of Agent-Telegrapher L. Abrams, Jr. for a call for March 17, 1962 based on the contention that the information transmitted by the section foreman to the telegrapher were "communications of record," and that when the section foreman was required or permitted to transmit "communications of record" the agreement between the Carrier and the ORT was violated.

Claim has been denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is the regularly assigned agent-telegrapher at Sheffield, Iowa, and as such his work week is Monday through Friday, Saturday and Sunday rest days. This is a one-man station.

On Saturday, March 17, 1962, an assigned rest day of Claimant's work week, Section Foreman J. D. Reetz, by use of telephone at Sheffield, contacted the telegrapher at Marshalltown, Iowa and gave three separate messages which in turn were then relayed by wire to Chief Dispatcher at Minneapolis and to a Mr. Olson at Hopkins, Minnesota. The first message was a slow order on passing track East of depot Rockwell. The second was a slow order removal on West House Track switch at Rockwell; and, the third that a track switch at Rockwell be taken out of service along with request for material replacement of a defective switch point.

The Organization contends that Carrier's act of requiring or permitting the Section Foreman, an employee "not within the meaning" of the parties' Agreement, to transmit over the telephone "communications of record"; the contents of the messages therein of such importance to the movement of trains, violated the Scope and contingent rules of the parties' Agreement. Claimant

therefore, is entitled to be paid for a "call" pursuant to the provisions of Rule 10(a).

Carrier alleges that the Section Foreman's messages to the telegrapher at Marshalltown were merely information or instructions to the dispatcher and were not "communication of record" nor is there a rule in the Agreement which grants to telegraphers the right to handle communications of record exclusively.

Numerous Third Division awards concerning this subject have been cited and discussed by the parties and upon reviewing these past awards, this Division has consistently held that the use of the telephone has not been reserved or restricted for the use of telegraphers exclusively; that all messages transmitted by telephone by employees other than those subject to the Telegraphers' Agreement are not all communications of record; however, the Board has held that if the message directly affects the movement of trains it is then a transmittal of a "communication of record" and is work belonging exclusively to telegraphers. Award 13730.

From the facts in the instant dispute, we are convinced that the information transmitted by the use of the telephone from the Foreman at Sheffield to the telegrapher at Marshalltown did fall within the class of messages defined by the Board as communications of record which directly affected the movement of trains at Rockwell.

It is true that the mere fact that the telegrapher reduced the information of the telephone call to writing did not in itself make it a message of record. Nor was the telegrapher required to send the three messages; however, in our opinion, once they were reduced to writing and relayed by wire to the dispatcher, in short, "acted upon" which directly affected the movement of trains at Rockwell, they became a transportation communication of record, not merely "information" as alleged by the Carrier. Copies of these communications are contained in the record and we conclude they are the type of transmittal covered and included within the Scope Rule of the parties' Agreement. As such, Claimant was entitled to be called.

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 violated the Agreement.

AWARD

Claim (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1967.

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