

Award No. 16433
Docket No. TE-14978

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Fort Worth and Denver Railway, that:

1. The Carrier violates the Telegraphers' Agreement when it requires or permits employes not covered by the scope of said Agreement to perform the work of handling communications of record at Quanah, Vernon, Turkey, Petersburg, Quitaque, Plainview and Memphis, Texas.

2. Carrier shall, because of the violations set out in paragraph 1 hereof, compensate Cashier-Telegrapher H. H. Hines, Quanah, Texas; Cashier-Telegrapher H. Anderson at Vernon, Texas; Agent-Telegrapher C. E. Russell at Turkey, Texas; Agent-Telegrapher W. Mooney at Petersburg, Texas; Agent-Telegrapher D. W. Davis at Quitaque, Texas; Telegrapher L. Bond at Plainview, Texas; and Agent J. J. McMickin at Memphis, Texas, each, for three (3) hours at the pro rata rate of the position occupied for each day commencing February 25, 1963, and continuing thereafter so long as the violation complained of continues.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Fort Worth and Denver Railway Company, hereinafter referred to as Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Organization and/or Employees, governing the employment, working conditions and compensation of employes in telegraph and station service effective December 1, 1955, and as amended. Copies of said Agreement are, as required by law, assumed to be on file with this Board and are, by this reference, made a part hereof.

At pages 85-86 of said Agreement are listed by location, position title and rates of pay the positions covered by said Agreement. For ready reference the position listing for the locations involved in these disputes are as follows:

Location	Title of Position	Rate of Pay
Quanah	*Agent	\$478.1700 per month
Vernon	Cashier-Telegrapher	2.0700 per hour

car operators merely inform them when a train is due so they may get off the track and out of the way.

Agreement between the Fort Worth and Denver Railway Company and The Order of Railroad Telegraphers, effective December 1, 1955, is on file with the Board and by reference is made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This consolidated claim arises out of Petitioner's contention that Carrier has violated Rule 1(b) of the effective Agreement since February 25, 1963 at stated locations whenever section foremen or other employees not covered by said Agreement receive train line-ups by telephone and record them in accordance with Carrier's operating rules when no telegraphers are on duty.

Petitioner contends that Rule 1(b) of the Agreement grants telegraphers the exclusive right to handle communications of record and that motor car line-ups are clearly communications of record within the meaning of Rule 1(b). Therefore, Petitioner maintains that conflicting practice over a period of many years cannot abrogate the clear and unambiguous terms of the Agreement.

Carrier insists that the Scope Rule does not reserve this work exclusively to telegraphers; that the work here at issue has historically been performed by employees in the Maintenance of Way department; and that Rule 1(b) is inapplicable because disputed changes in Carrier's operating rules did not operate to remove any work belonging exclusively to telegraphers out from under the Agreement.

Rule 1(a) of the Agreement does not purport to describe the work to be performed by various classes of employees covered by the Agreement, nor is any work specifically reserved therein to certain employees. Rule 1(b) of the Agreement provides as follows:

"(b) Improvements or changes in the manner of handling train orders or communications of record shall not operate to take that work out from under this agreement."

As the Scope Rule is general in nature, we must look to custom and practice to ascertain whether or not the work in dispute is exclusively reserved to telegraphers. We find that employees other than telegraphers have obtained motor car line-ups for many years under similar circumstances, and that this Division previously determined that Petitioner lost the exclusive right to such work through established practice over a twenty year period prior to challenge in 1956. Awards 10951 and 11895.

Rule 1(b) is clearly prospective in application and is inapplicable to the work in dispute over which Petitioner lost exclusive jurisdiction prior to the adoption of the contractual language relied on in this case. Accordingly, we must find that the established practice on this property of securing track car line-ups has not been modified or abrogated by revision of the Scope Rule or by any interpretation on the property. Therefore, the claim will be denied.

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 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 not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1968.