



Award No. 16447
Docket No. TE-15299

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Grand Trunk Western Railroad, that:

CLAIM NO. 1

1. Carrier violated and continues to violate the terms of an Agreement between the parties hereto, when, commencing November 13, 1963, following a change in the starting time of the agent-operator's position at Richmond, Michigan it required or permitted the section foreman, an employee outside the scope of said Agreement, to use a commercial telephone located in the agent-operator's office at Richmond, Michigan to call the operator at Tappan, Michigan and copy from him over the telephone a train lineup prior to the new starting time of the position, thereby depriving F. I. Fisher, regular occupant of the agent-operator's position at Richmond, Michigan the right to perform work covered by the Agreement, which he has for years performed as an integral part of the position, and to thus deprive him of the pay provisions of the overtime and call rule of said Agreement.

2. Carrier shall, because of the violation set out in paragraph one hereof, commencing November 13, 1963 and continuing five (5) days per week thereafter or until the section foreman at Richmond, Michigan ceases to violate the Agreement, pay Agent-Operator F. I. Fisher, occupant of the agent-operator's position, a "call" in accordance with the provisions of Rule 5 of the Agreement.

CLAIM NO. 2

1. Carrier violated the terms of an Agreement between the parties hereto when, on November 19, 1963, prior to the starting time of the agent-operator's position at Richmond, Michigan, it required or permitted Gang Foreman C. H. Johnson, an employee outside the scope of said Agreement, to copy a train lineup over the telephone from the train dispatcher.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate F. I. Fisher, regular occupant of the agent-operator's position at Richmond, Michigan, a "call" in accordance with the provisions of Rule 5 of the Agreement.

CLAIM NO. 3

1. Carrier violated and continues to violate the provisions of an Agreement between the parties hereto when, on Saturday, January 4, 1964, a rest day of the agent-operator's position at New Haven, Michigan, and prior to the starting time of said position on January 7, 8, 9, 1964, and each work day thereafter Monday through Friday, it requires or permits a track patrolman, an employee outside the scope of said Agreement, to use the commercial telephone in said office to call the agent-operator at Fraser, Michigan and receive over the telephone train lineups.

2. Carrier shall, because of the violations set out in paragraph one hereof, commencing January 4, 1964, compensate D. C. Morrison, regular occupant of the agent-operator's position at New Haven, Michigan, a "call" in accordance with the provisions of Rule 5, and/or the provisions, in the case of rest days, of Rule 6 II (B) 2, so long as the violation complained of continues.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Grand Trunk Western Railroad Company, hereinafter referred to as Carrier, and its employees represented by the Order of Railroad Telegraphers, hereinafter referred to as Employees and/or Organization, effective November 1, 1955, and as otherwise amended. Copies of said Agreement are available to your Board and are, by this reference, made a part hereof.

Under Addendum No. 1 at page 57 of said Agreement are listed the positions in effect at Richmond and New Haven, Michigan on the effective date thereof. For ready reference, the listings read:

Station	Position	Rates Per Hour
Richmond	Agent	\$1.997
New Haven	Agent-Operator *(H.F.L.)	1.811

*H. House, F. Fuel, L. Light

The above position listing establishes: (1) That each is a one-man agency. (2) That each is a telegraph or telephone office within the meaning of Rule 1 (Scope) whereat "employees assigned by proper authority to railway telegraph or railway telephone service of any character or duration, * * * will be considered telegraphers." (3) That these positions and the work thereof are subject to the Agreement. (4) That the work of the positions, as manifested by their classification, is protected to the craft by the Agreement. (5) That the rate of pay (increased by subsequent negotiations) attached to the positions is a negotiated rate of pay in accordance with the class of work performed by the occupant of these positions.

The sole question at issue here is the right of employees occupying these positions, covered by the Agreement, to perform the class of work covered by the Agreement in accordance with the terms thereof.

OPINION OF BOARD: The issue involved herein is whether or not Carrier violated the Agreement when a Section Foreman received a lineup of trains at a station, prior to the starting time of the regularly assigned telegrapher from a telegrapher at an adjacent station.

This same issue was involved in Award No. 9502 (Elkouri) concerning the same parties herein, and inasmuch as said Award 9502 is not palpably erroneous, and is controlling in this dispute, we are compelled to deny these claims.

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 by the Carrier.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June 1968.