



Award No. 16634
Docket No. TE-16230

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Colorado and Southern Railway, that:

1. Carrier violated an Agreement between the parties hereto when on May 7, 1965, it required or permitted Supervisory Agent Frank Gergly, an employe outside the scope of said Agreement at Fort Collins, Colorado, to perform the work of transmitting by telephone a communication of record to the telegrapher at Loveland, Colorado, at a time when claimant was available for call but was not called to perform this covered work.

2. Carrier shall, because of the violations set out in paragraph 1 hereof, compensate G. W. Colvin, first shift telegrapher-clerk Fort Collins, Colorado, for a two hour call at the time and one-half rate of the position occupied.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the Colorado and Southern Railway Company, hereinafter referred to as Carrier, and its employes represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Employes and/or Union, effective October 1, 1948, rates effective as of December 3, 1954, including changes and agreed to interpretations to January 1, 1955, and as otherwise amended and supplemented, is available to your Board, and by this reference is made a part hereof.

At page 36 of the Agreement, Rule 38, Rates of Pay, are listed the positions covered by the Agreement at Fort Collins, Colorado, on the effective date of said Agreement. The listing, for ready reference, reads:

Location	Classification	Rate per Hour
Fort Collins	T	\$1.865
	T	1.825
	T	1.825

It is also the Organization's contention that the message in question falls into the category (3), since if the claimant Mr. Colvin had been on duty at Fort Collins when this message was telephoned to Loveland, he, and not the Supervisory Agent would have transmitted it in accordance with the normal practice.

In order to answer the fourth paragraph of your letter, this claim is based on the Scope, Rule 1, of the Agreement, Rule 9 of the Agreement, and Third Division Awards Nos. 5524, 6419, 6451, 6693, 8663 and various awards of Special Board of Adjustment No. 553.

Your decline of this claim cannot be accepted and it will be handled in the usual manner.

Very truly yours,

/s/ W. E. Drew"

CARRIER'S STATEMENT OF FACTS: There is no record whatever or remembrance by the employes allegedly involved of any transaction on May 7, 1965, as described by the petitioning Organization in Item 1 of the claim hereinbefore alleged and asserted. Consequently, the claim is fundamentally erroneous thus undeserving of consideration.

Be that as it may, Station Agent F. P. Gergely, Fort Collins, Colorado, did have telephone conversation at 7:10 A.M. on Tuesday, May 4, 1965, with Telegrapher S. F. Pope, Loveland, Colorado, during the course of which Agent Gergely requested Telegrapher Pope to give northbound freight train No. 77's crew a message to pick up five empty cars for the north off No. 1 track, North Yard, Fort Collins, and that the waybills therefor would be in the telephone booth, the customary place. (Carrier's Exhibit A.) From such information, Telegrapher Pope composed and delivered to No. 77's crew, as intended, the following message:

"Loveland, Colorado
May 4, 1965

C&E No. 77 — Loveland

Pick up 5 mtys for North on No. 1 track North Yard Ft. Collins.
Waybills in fone booth.

/s/ F.P.G. 7:15 A.M."

Telegrapher Pope, who took such information and composed the message, is regularly assigned at Loveland, hours 7:00 A.M. to 3:00 P.M., Monday through Friday.

The Telegrapher named in the instant claim (G. W. Colvin) is regularly assigned Telegrapher at Fort Collins, hours 9:00 A.M. to 5:00 P.M., Monday through Friday, and was off duty at the time. There is also another Telegrapher with assigned hours 6:00 P.M. to 2:00 A.M. at Fort Collins. There is no "first shift telegrapher-clerk" at Fort Collins as the previously-described claim, for purposes unknown, indicates.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves the handling of a message over a telephone by an employe other than a telegrapher. Petitioner alleges a

violation of the Scope Rule, which though admittedly broad and general in its terms, covers the handling of messages such as the instant one, because, they allege, such messages have been handled by telegraphers by history, tradition and custom to the exclusion of all other employees.

The latter allegation has been made throughout the record before us, but Petitioner has failed to present any substantial evidence in support of its position. The burden of proof is always on the Petitioner to prove his case by a preponderance of the evidence.

We find no evidence that messages such as the one before us have been handled historically, traditionally etc. by telegraphers to the exclusion of other employees. We will deny 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 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 18th day of October 1968.