

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC COMPANY
(Texas & Louisiana Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers of the Southern Pacific Company (Texas & Louisiana Lines) that the Carrier violated the terms of Rule 1 (Scope Rule) of the Telegraphers' Agreement as follows:

1. The Carrier on the dates shown required and/or permitted persons not subject to Rule 1 (Scope Rule) of the Telegraphers' Agreement to handle communications of record at Galveston, Texas.

2. Carrier shall now be required to pay claimants named herein as follows:

K. C. Hill, a day's pay at the time and one-half rate for October 29 and 30, 1963.

J. A. Emerson, a day's pay at the time and one-half rate for November 4, 1963.

J. C. Cooper, a day's pay at the time and one-half rate for November 5, 1963.

M. F. White, a day's pay at the time and one-half rate for November 6, 1963.

J. C. Cooper, a day's pay at the time and one-half rate for November 12, 1963.

Carrier shall also be required to pay a day's pay at the time and one-half rate in effect at Harrisburg, Tower 30, and/or Englewood for each successive date after November 12, 1963, for each of the above named employees (who were on their rest days) on the above dates claimed, or their successor and continuing thereafter until the violations are corrected.

Superintendent declined the claim which was appealed in regular manner by the General Chairman, ORT, to Carrier's Manager of Personnel. May 1, 1964, the claim was declined. Subsequent conference on the property failed to produce a settlement. Carrier reproduces as Exhibit No. 1 the correspondence in connection with this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Issue herein is whether or not Carrier violated the Agreement when it permitted clerks, not covered by the Agreement, to transmit, by telephone, switch lists for train No. 221, a local freight train operating between Houston and Galveston, Texas.

The Organization in its ex parte submission bases this claim on the premise that the work in question in this dispute is reserved exclusively to telegraphers and has been performed exclusively by them in the past; that the information passed was a "communication of record" and has by past practice been exclusively performed by telegraphers.

The Carrier's position is that the Scope Rule of the Agreement does not list the work covered by the Agreement and therefore petitioners failed to sustain its burden of showing that such work has been by practice reserved to them system wide; that the use of the telephone is not reserved exclusively by Agreement or practice to telegraphers; that the information passed from the clerk at Galveston to the Houston clerk for relay to the conductor of train No. 221 was not a "communication of record" which by past practice telegraphers have solely transmitted.

The Organization, in its oral panel discussion before this Board vigorously argued that the criteria as set forth in Carrier's ex parte submission in determining what constitutes a "communication of record" should be followed in deciding this dispute and that applying said criteria herein, namely, if said communication (a) affects the operation of trains, the best example of which is train orders; (b) affects the safety of persons and property; and (c) is required to be made matter of record, Carrier therefore violated the Agreement and the claim should be sustained.

We do not agree with this contention of the Organization that the aforesaid criteria should be the sole basis for adjudicating this dispute. We feel that we must first determine whether or not the Scope Rule of the Agreement was violated. (We do not concur with the Organization in its oral panel discussion before this Board that this was not raised on the property by the Carrier.)

This Board has adhered to and followed the principle in Awards too numerous to mention, that if the Scope Rule is a general scope rule, where its scope is defined in terms of position rather than work, then the burden is on the Organization to prove by custom, tradition and past practice on the Carrier's system that such specific work has been exclusively reserved and performed by the petitioners therein.

In our instant claim, the Scope Rule is general in nature, and a close examination of the record does not disclose any competent evidence showing that the work here involved has been historically, customarily and exclusively performed, system wide, by these petitioners. Therefore, it is not necessary

for us to determine whether or not the information relayed in this instance was a "communication of record."

For the aforesaid reasons, we are compelled to conclude that the Agreement was not violated and the claim must therefore 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 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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1968.