Award No. 17984
Docket No. TE-17948

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Union Pacific Railroad Company (Western Lines), that:

CLAIM NO. 1

1. Carrier violated the parties' Agreement on July 5, 1967, when an employe holding no rights under said Agreement copied a communication of record which related to the movement of his train at Salt Lake City Yard, Utah.

2. Carrier shall now be required to pay G. H. Shryers a call, two (2) hours at the time and one-half rate of $4.67 per hour because of this violation.

CLAIM NO. 2

1. Carrier violated the parties' Agreement on July 10, 1967, when an employe holding no rights under said Agreement copied a communication of record which related to the movement of his train at Salt Lake City Yard, Utah.

2. Carrier shall now be required to pay T. C. McGraw, two (2) hours at the time and one-half rate of $4.67 per hour because of this violation.

CLAIM NO. 3

1. Carrier violated the parties' Agreement on June 28, 1967, when an employe holding no rights under said Agreement copied a communication of record which related to the movement of his train at Minidoka, Idaho.

2. Carrier shall now be required to pay H. W. Jones a call, three (3) hours at the pro rata rate of his position because of this violation.

OPINION OF BOARD: Claim Nos. 1 and 2 arose in connection with the use of telephones by members of a yard crew to call train dispatcher for permission to use the main track in CTC territory in performing industrial switching. For this purpose a Form C Clearance is used. The Carrier contends that Form C Clearance has been used at Salt Lake City and other major terminals where yard crews are employed since CTC was placed in operation in 1949. The Carrier also points out that the location where the telephone was used by members of the yard crew (Signal 174) is approximately one mile from the location of the telegraph office.

The Petitioner does not dispute the practice as contended by the Carrier, but contends that the Agreement was violated when employes other than those covered by the Agreement were permitted to handle communications relating to the movement of trains. The Carrier contends that the Form C Clearance is not a train order, but is authority to proceed from a stop signal or authority to work between stated locations for stated periods of time, and that such clearances are referred to generally as "track and time limit permits" or "track and time limit messages." The Carrier relies upon Awards 14028, 14536, 14537 and 15934 of this Division denying claims of telegraphers where members of train or yard crews used telephones in similar circumstances. We have reviewed those Awards and find them controlling. Accordingly, Claims Nos. 1 and 2 will be denied.

Claim No. 3 arose in connection with the operation of a first-class passenger train. There is a passing track, or main line siding track, at Minidoka, Idaho, approximately 2¼ miles in length. The depot is located nearly midway along the track. Telegraphers are employed twenty-four hours a day at the depot. On June 28, 1967, first-class passenger train No. 17 stopped at Minidoka. On departure, the train moved west to a point approximately 1¼ miles from the depot to where the train was to re-enter the main line, where it encountered a red block signal. In accordance with Operating Rule 267, the engineer of train No. 17 went to the trackside telephone, where he called the dispatcher to request authority to proceed. Authority was granted by the dispatcher by the issuance of a Form C Clearance. The Carrier contends that the procedure followed here has also been in effect for many years. The Petitioner in handling on the property contended that the Form C Clearance in this instance was a train order.

Award 12935 covered a case very similar to instant Claim No. 3. There the Board found:

> "* * * But it is not contested that the telephone booth at which the conductor received the message was not in fact at the location where the Claimant had been employed on Saturdays and continued to be employed on Mondays through Fridays. The said booth was one of three located respectively six-tenths of a mile from the station milepost, one and one-tenths of a mile from the station milepost, and two and eight-tenths miles from the station milepost. It has not been established by the Petitioner that even if Claimant Gibby had been on duty, he would have handled this call or would have had the right to so do. Furthermore, as pointed out above, Petitioner did not refute Carrier's statement that such calls (at posts removed from the actual telegraph station) have been handled daily all over the system by other than telegraphers.
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> * * * * *

Under these circumstances, we not only find absent a proof of customary and traditional exclusivity necessary to establish a violation of the general Scope Rule, but also the absence of such conditions as would show a failure to adhere to Rule No. 31 of the Agreement. Such circumstances as those present here were recently dealt with by us in 22 decisions involving the same parties, the same Agreement, and similar contentions. (Awards 12150–12171.) We held in all of these claims that the copying of train orders by conductors and others not covered by the Telegraphers' Agreement at locations where telegraphers were not employed was not in violation of the agreement. Award No. 12168 covered a situation very close to the facts given here. The Board stated (in the controlling Award No. 12150):

> 'The record reveals that the custom and practice of having train orders copied by other than telegraphers at telephone booths where telegraphers were not stationed was in vogue for a great many years prior to the effective date of the Telegraphers' Agreement, and continued to the date of this claim. In fact, the letter of October 19, 1929, which is referred to by a note appended to Rule 31, the Train Order Rule, incorporated in the current Agreement, confirms this.'

On the simple grounds that there was no telegraph or telephone office where an operator is employed at the location at which this message was handled, we reject Petitioner's claim of a violation of Rule 31. It is not necessary for us to rule on whether this message was, in fact, a train order, because assuming it was, it was no violation to have handled it through a train conductor, under these circumstances."

A similar holding is warranted by the record in the present dispute as to Claim No. 3, and it will also be denied. See also Award 14936, involving the Carrier here involved and another agreement.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1970.

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