

Award No. 17985
Docket No. TE-18054

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
ERIE LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Erie Lackawanna Railroad, that:

CLAIM NO. 1

1. Carrier violated the parties' agreement when it required and/or permitted an employe holding no rights under the agreement to perform the work of a telegrapher and telephoner at Garrettsville, Ohio on March 24, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the incumbent of the Agent-Operator position at Garrettsville, Ohio for a "call" payment as provided in Rule 9 for March 24, 1967.

CLAIM NO. 2

1. Carrier violated the parties' agreement when it required and/or permitted an employe holding no rights under the agreement to perform the work of a telegrapher and telephoner at Ravenna, Ohio on December 9, 1966.

2. Carrier shall, because of violation in (1) above, be required to compensate the incumbent of the Agent-Operator position at Ravenna, Ohio for a "call" payment as provided in Rule 9 for December 9, 1966.

CLAIM NO. 3

1. Carrier violated the parties' agreement when it required and/or permitted an employe holding no rights under the agreement to perform the work of a telegrapher and telephoner at Ravenna, Ohio on March 1, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the incumbent of the Agent-Operator position at Ravenna for a "call" payment as provided in Rule 9 for March 1, 1967.

CLAIM NO. 4

1. Carrier violated the parties' Agreement when it required and/or permitted an employe, D. Wilson, Signal Maintainer, holding no rights under the Agreement, to perform the work of a telegrapher and telephoner at Ramsey, New Jersey on March 27, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the regular incumbent of the Agent-Operator position at Ramsey for one hour overtime at the time and a half rate of the position.

CLAIM NO. 5

1. Carrier violated the parties' Agreement when it required and/or permitted an employe, Track Foreman Marioni, holding no rights under the Agreement, to perform the work of a telegrapher and telephoner at Middletown, New York, on May 8, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the senior idle employe (extra in preference) a day's wages at the rate of the Operator-Clerk position at Middletown, New York.

In the event there are no extra men available, Carrier shall compensate the regularly assigned incumbent of the aforementioned position in like manner.

CLAIM NO. 6

1. Carrier violated the parties' Agreement when it required and/or permitted an employe holding no rights under the Agreement to perform the work of a telegrapher and telephoner at Allendale, New Jersey, on June 7, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the incumbent of the Agent-Operator position at Allendale, New Jersey, for a "call" payment as provided in Rule 9 of the Agreement for June 7, 1967.

CLAIM NO. 7

1. Carrier violated the parties' Agreement when it required and/or permitted an employe holding no rights under the Agreement to perform the work of a telegrapher and telephoner on February 6, 1967, at Monroe, New York.

2. Carrier shall, because of violation in (1) above, be required to compensate the regular incumbent of the Agent-Operator position at Monroe, New York for a "call" payment as provided in Rule 9 of the Agreement.

CLAIM NO. 8

1. Carrier violated the parties' Agreement when it required and/or permitted an employe holding no rights under the Agreement,

to perform the work of a telegrapher and telephoner at Monroe, New York, on the days listed below: February 17, 1967 and two on March 14, 1967.

2. Carrier shall, because of violations in (1) above, be required to compensate the regular incumbent of the Agent-Operator position at Monroe, New York, for a "call" payment as provided in Rule 9 of the basic working Agreement.

CLAIM NO. 9

1. Carrier violated the parties' Agreement when it required and/or permitted an employe, J. Ribando, Track Foreman, holding no rights under the Agreement, to perform the work of a telegrapher and telephoner at Monroe, New York, on April 3 and on April 28, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the regular incumbent of the Agent-Operator position at Monroe, New York for one hour overtime at the time and a half rate of the position.

CLAIM NO. 10

1. Carrier violated the parties' Agreement when it required and/or permitted an employe holding no rights under the Agreement to perform the work of a telegrapher and telephoner on May 11, 1967, at Monroe, New York.

2. Carrier shall, because of violation in (1) above, be required to compensate the senior idle employe (extra in preference) a day's wages, as provided in the Agreement.

In the event there were no extra employes available, Carrier shall compensate the regularly assigned incumbent at the pro rata rate of the position.

CLAIM NO. 11

1. Carrier violated the parties' Agreement when it required and/or permitted an employe holding no rights under the Agreement to perform the work of a telegrapher and telephoner at Monroe, New York, on May 25, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the incumbent of the Agent-Operator position at Monroe, New York, for a "call" payment as provided in Rule 9 for May 25, 1967.

CLAIM NO. 12

1. Carrier violated the parties' agreement when it required and/or permitted an employe holding no rights under the agreement to perform the work of a telegrapher and telephoner at Bath, New York on April 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28 and May 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29 and 31, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the incumbent of the Agent-Operator position at Bath, New York for a "call" payment as provided in Rule 9 for each day and date set forth above.

CLAIM NO. 13

1. Carrier violated the parties' agreement when it required and/or permitted an employe holding no rights under the agreement to perform the work of a telegrapher and telephoner at Bath, New York on June 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29 and 30, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the incumbent of the Agent-Operator position at Bath, New York for a "call" payment as provided in Rule 9 for each day and date set forth above.

CLAIM NO. 14

1. Carrier violated the parties' agreement when it required and/or permitted an employe holding no rights under the agreement to perform the work of a telegrapher and telephoner at Bath, New York on July 3, 5, 6, 7, 10, 11, 12, 13, 14, 18, 19, 20, 21, 24, 25, 26, 27, 28 and 31, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the incumbent of the Agent-Operator position at Bath, New York for a "call" payment as provided in Rule 9 for each day and date set forth above.

CLAIM NO. 15

1. Carrier violated the parties' Agreement when it required and/or permitted an employe holding no rights under the Agreement to perform the work of a telegrapher and telephoner at Goshen, New York, on the dates listed below.

2. Carrier shall, because of violation in (1) above, be required to compensate the senior idle employe (extra in preference), for a "call" payment as provided in Rule 9, on each of the dates listed below.

In the event there are no extra employes available, Carrier shall compensate the following regularly assigned employes for a "call" payment on their rest days as provided in Rule 9.

F. B. Mason — Thursday, January 5, 1967.

J. P. Sweeney — Friday, January 13, 1967.

Charles Howells — Wednesday, January 18, 1967.

F. B. Mason — Thursday, January 26, 1967.

J. P. Sweeney — Friday, January 27, 1967.

CLAIM NO. 16

1. Carrier violated the parties' Agreement when it required and/or permitted an employe holding no rights under the Agreement to perform the work of a telegrapher and telephoner at Goshen, New York, on the dates listed below.

2. Carrier shall because of violation in (1) above, be required to compensate the senior idle employe (extra in preference) for a "call" payment as provided in Rule 9 of the Agreement, on each of the dates listed below.

In the event there are no extra employes available, Carrier shall compensate the following regularly assigned employes for a "call" payment on their rest days as provided in Rule 9.

Charles Howells — Wednesday, February 1, 1967.

J. P. Sweeney — Friday, February 3, 1967.

E. A. Casey — Monday, February 6, 1967.

J. P. Sweeney — Friday, February 10, 1967.

CLAIM NO. 17

1. Carrier violated the parties' Agreement when it required and/or permitted an employe not holding rights under the Agreement, to perform the work of a telegrapher and telephoner at Goshen, New York, on the dates of February 17, 20, 27, 28 and March 3, 9, 13, 14, 1967.

2. Carrier shall, because of violations in (1) above, be required to compensate the senior idle employe (extra in preference) a day's wages on each of the dates listed below.

In the event there are no extra employes available, Carrier shall compensate the following regularly assigned employes for a "call" payment on their rest days as provided in Rule 9.

Mr. J. P. Sweeney, Friday, Feb. 17, 1967.

Mr. E. A. Casey, Monday, Feb. 20 and 27, 1967.

Mr. A. Verlezza, Tuesday, Feb. 28, 1967.

Mr. J. P. Sweeney, Friday, March 3, 1967.

Mr. F. B. Mason, Thursday, March 9, 1967.

Mr. E. A. Casey, Monday, March 13, 1967.

CLAIM NO. 18

1. Carrier violated the parties' Agreement when it required and/or permitted an employe not holding rights under the Agreement to perform the work of a telephoner and telegrapher at Goshen, New York, on the following dates: March 27, 28, 29, 31, 1967. Also on April 3, 10, 26, 27, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the senior idle employe (extra in preference) for one

day's wages at the pro rata rate of the former Agent position at Goshen, New York, on each of the dates listed above.

In the event there are no extra employes available, Carrier shall compensate the following regularly assigned employes for a "call" payment on their rest days, as provided in Rule 9 of the parties' Agreement:

Mr. E. A. Casey, Monday, March 27, 1967.
Mr. E. A. Casey, Monday, April 3, 1967.
Mr. A. Verlezza, Tuesday, March 28, 1967.
Mr. A. Verlezza, Tuesday, April 10, 1967.
Mr. W. E. Hawkins, Wednesday, March 29, 1961.
Mr. W. E. Hawkins, Wednesday, April 26, 1967.
Mr. J. P. Sweeney, Friday, March 31, 1967.
Mr. F. B. Mason, Thursday, April 27, 1967.

CLAIM NO. 19

1. Carrier violated the parties' Agreement when it required and/or permitted an employe holding no rights under the Agreement to perform the work of a telegrapher and telephoner at Goshen, New York, on April 20, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the senior idle employe (extra in preference) for a "call" payment as provided in Rule 9 of the Agreement.

In the event there were no extra employes available, Carrier shall compensate the following regularly assigned employe a "call" payment on his rest day, as provided in aforesaid Rule 9.

Mr. F. B. Mason, Thursday, April 20, 1967.

CLAIM NO. 20

1. Carrier violated the parties' Agreement when it required and/or permitted an employe not holding rights under the Agreement to perform the work of a telegrapher and telephoner at Goshen, New York, on the following date: Friday, May 19, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the senior idle employe (extra in preference) for a "call" payment as provided in Rule 9 of the Agreement, at the time-and-a-half rate of the former Agent position at Goshen, New York on the date listed above.

In the event there were no extra employes available, Carrier shall compensate the following regularly assigned employe for a "call" payment on his rest day, as provided in Rule 9 of the parties' Agreement:

Mr. E. P. Beams, Friday, May 19, 1967.

CLAIM NO. 21

1. Carrier violated the parties' Agreement when it required and/or permitted an employe not holding rights under the Agreement to perform the work of a telegrapher and telephoner at Goshen, New York, on the following date: Monday, April 10, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the senior idle employe (extra in preference) for a "call" payment as provided in Rule 9 of the Agreement, at the time-and-a-half rate of the former Agent position at Goshen, New York on the date listed above.

In the event there were no extra employes available, Carrier shall compensate the following regularly assigned employe for a "call" payment on his rest day, as provided in Rule 9 of the parties' Agreement:

Mr. E. A. Casey, Monday, April 10, 1967.

CLAIM NO. 22

1. Carrier violated the parties' Agreement when it required and/or permitted an employe not holding rights under the Agreement to perform the work of a telegrapher and telephoner at Goshen, New York on the following date: Friday, May 19, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the senior idle employe (extra in preference) for a "call" payment as provided in Rule 9 of the Agreement, at the time-and-a-half rate of the former Agent position at Goshen, New York on the date listed above.

In the event there were no extra employes available, Carrier shall compensate the following regularly assigned employe for a "call" payment on his rest day, as provided in Rule 9 of the parties' Agreement:

Mr. J. P. Sweeney, Friday, May 19, 1967.

CLAIM NO. 23

1. Carrier violated the parties' Agreement when it required and/or permitted an employe not holding rights under the Agreement to perform the work of a telegrapher and telephoner at Tuxedo, New York on the following date: Monday, March 27, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the senior idle employe (extra in preference) for a "call" payment as provided in Rule 9 of the Agreement, at the time-and-a-half rate of the former Agent position at Tuxedo, New York, on the date listed above.

In the event there were no extra employes available, Carrier shall compensate the following regularly assigned employe for a

"call" payment on his rest day, as provided in Rule 9 of the parties' Agreement:

Mr. F. E. Kearns, Monday, March 27, 1967.

CLAIM NO. 24

1. Carrier violated the parties' Agreement when it required and/or permitted an employe holding no rights under the Agreement to perform the work of a telegrapher and telephoner at Tuxedo, New York, on June 9, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the senior idle employe (extra in preference) eight hours' pay at the pro rata rate of the position for the above-listed date.

In the event that there were no extra employes available, then the following regularly assigned employe should be compensated for a "call" payment, as provided in Rule 9, on his rest day:

Mr. E. P. Beams, Friday, June 9, 1967.

CLAIM NO. 25

1. Carrier violated the parties' Agreement when it required and/or permitted an employe holding no rights under the Agreement to perform the work of a telegrapher and telephoner at Tuxedo, New York, on July 8, 1967.

2. Carrier shall, because of the violation in (1) above, be required to compensate the senior idle employe (extra in preference) eight hours' pay at the pro rata rate of the position for the above-listed violation.

In the event there were no extra employes available, then the following named regularly assigned employe should be compensated for a "call" payment as provided in Rule 9, on his rest day.

Saturday, July 8, 1967 — Mr. A. F. Girard.

CLAIM NO. 26

1. Carrier violated the parties' Agreement when it required and/or permitted an employe holding no rights under the Agreement to perform the work of a telegrapher and telephoner at Goshen, New York, on June 12, 13, 16, 20, 26, 28, 1967 and July 7, 10, 18, 1967.

2. Carrier shall, because of violation in (1) above, be required to compensate the senior idle employe (extra in preference) eight hours' pay at the pro rata rate of the position for each of the above listed dates.

In the event that there were no extra employes available, then each of the following named regularly assigned employes should be

compensated for a "call" payment as provided in Rule 9, on their rest days.

Monday, June 12, 1967 — Mr. E. A. Casey.

Tuesday, June 13, 1967 — Mr. A. Verlezza.

Friday, June 16, 1967 — Mr. E. P. Beams.

Tuesday, June 20, 1967 — Mr. A. Verlezza.

Monday, June 26, 1967 — Mr. E. A. Casey.

Wednesday, June 28, 1967 — Mr. W. E. Hawkins.

Wednesday, July 19, 1967 — Mr. W. E. Hawkins.

CAR. FILES: Items 812, 814, 827, 835, 828, 836,
805, 811, 813, 824, 825, 832, 829,
830, 833, 834, 852.

COM. FILES: 7-G-183, 7-G-184, 15-O-90, 13-M-90.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

An Agreement between the Erie Railroad Company and this Union, effective March 4, 1957, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

These claims were timely presented, progressed in accordance with the provisions of the Agreement, including conference with the highest officer designated by Carrier to receive appeals, and have been declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

These claims arose out of Carrier's change in method of operation whereby employes not covered by the Telegraphers' Agreement are being required and/or permitted to copy train line-ups directly from train dispatchers, work that had been assigned to telegraphers by agreement, practice and tradition.

These line-ups are being copied at stations where a telegrapher (Agent-Operator) was employed, on duty, ready, willing and able to do the work. At stations where telegraphers are employed but off duty when the line-ups were copied, they were ready to respond to calls to do the work; they were not called. At stations where telegraphers had been recently employed, their positions abolished and stations closed. All of the stations involved in these claims had been manned by telegraphers for over sixty years, telegraphers' positions appearing at these locations in each and every agreement between the parties since January 1, 1906. The positions preceded that agreement by an unknown number of years. Likewise, the practice of telegraphers copying line-ups at these stations and systemwide, preceded the installation of the telephone on this property.

(b) ISSUES

Employes not covered by the Telegraphers' Agreement copying line-ups of trains.

jected the Organization's proposal and denied the claims based upon the facts, reasons and authorities shown therein. The affidavits attached to Carrier's November 2, 1967 letter and those furnished in other such cases are attached hereto as Carrier's Exhibit "C-1" through "C-65". Subsequent exchanges of correspondence, except the General Chairman's letter of January 11, 1968, which Carrier was unable to locate, and which will undoubtedly be included in Petitioner's submission, is identified by the following Exhibits:

Carrier Exhibit "D" — Carrier's letter dated February 6, 1968.

Carrier Exhibit "E" — General Chairman's letter dated February 16, 1968.

Carrier Exhibit "F" — Carrier's letter dated March 14, 1968.

Carrier Exhibit "G" — General Chairman's letter dated March 28, 1968.

Carrier Exhibit "H" — General Chairman's letter dated May 9, 1968.

Carrier Exhibit "I" — Carrier's letter dated May 17, 1968.

Carrier Exhibit "J" — General Chairman's letter dated June 6, 1968.

(Exhibits not reproduced.)

OPINION OF BOARD: The claims in this dispute involve the use of the telephone by Section Foremen and other employes not covered by the Telegraphers' Agreement in obtaining train lineups directly from the train dispatcher. The Organization contends that such communications are messages of record and preserved to Telegraphers by the Scope Rule of the Agreement on this property and industry-wide by General Order No. 27, and particularly Supplement No. 13 thereto.

The Carrier contends that the performance of such work is not reserved to Telegraphers by the Agreement and that such lineups have been obtained from train dispatchers by Section Foremen and other employes requiring such lineups for many years past.

The Scope Rule of the Agreement reads as follows:

"RULE 1. SCOPE

(a) This agreement shall govern the employment, working conditions and compensation of the following:

Agents (Includes only those in wage scale)

Agent Telegraphers

Agent Telephoners

Manager of Telegraph Offices

Telegraphers, Telegrapher Clerks

Telephoners (Not including telephone switchboard operators)

Telephoner-Clerks

Block Operators

Tower and Train Directors

Towermen

Levermen

Train Starters

Any combination of two or more of the above classifications.

Occupants of any other position listed in the wage scale.

(b) The word 'employee', as used in these rules, will apply only to employes enumerated in paragraph (a) of this rule.

(c) Where Caretakers, Custodians or other similar employes are employed at stations, the duties of such employe shall not include any of the work ordinarily performed by employes enumerated in paragraph (a) of this Rule, except such work as lighting, heating and caring for station building, the handling of U. S. Mail and the protection of other company property generally."

The Scope Rule of the Agreement in question as well as the effect of General Order No. 27, particularly Supplement No. 13, was before this Board in a dispute between the parties decided by our Award 13335 (Dorsey) wherein we held:

"The Scope Rule of the Agreement is general in nature. To prevail, Telegraphers have the burden of proving, by a preponderance of the evidence, that messages of this kind have been transmitted, exclusively on the property by employes covered by the Agreement. Instead, it argues, in effect, that industry wide the transmission of such information has been, historically, the work of telegraphers.

The work reserved to Telegraphers is not uniform on different systems even though the Scope Rule of the Telegraphers' Agreements is substantially and sometimes identically the same. What is reserved to Telegraphers under a Scope Rule, general in nature, is a matter of proof—not of predilection."

We affirm that statement, and note that it was also affirmed by Referee Dorsey in Award 15163 involving these disputants.

In this dispute Petitioner has presented statements from various telegraphers purporting to show that the work in question has been customarily and historically performed by telegraphers. Many of these statements are directed to other work items, and some of them merely refer to train lineups in an offhand manner. Very few of them allege exclusive performance of handling train lineups to telegraphers.

On the other hand, Carrier denies that the handling of train lineups is work that is exclusively reserved to telegraphers by history, custom and practice and has submitted numerous statements from train dispatchers, section foremen and other employes to the effect that over a long number of years such communications have taken place directly between train dispatchers and employes other than telegraphers. These statements indicate that on occasions train lineups are also obtained from telegraphers, but not exclusively. The fact that employes other than telegraphers on some occasions copy train lineups at locations where operators are on duty does not constitute a violation of the Agreement, since the work is not exclusively that of telegraphers. The evidence in this dispute preponderates in favor of Carrier. We also cannot ignore the attempt of the Organization to obtain a revision of the rule which would have granted the handling of train lineups and other communication work to employes covered by the Agreement. The Board has previously held that to ask for a change in the rule indicates that it does not cover that which it seeks to secure by the change. Awards 14594 (Dorsey), 15394 (Hamilton) and 15488 (Zumas).

The Organization relies, to some extent, upon Awards 12942 and 12944 (Wolf), involving similar issue between these parties. We have examined those awards and find that decision that the Agreement was violated was based upon Carrier's failure, in the handling on the property, to properly refute the contentions of the Petitioner. We therefore do not find them to be controlling in the disposition of the claims presently before us.

In view of what is said above we must hold the claims to 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 25th day of June 1970.