

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Paul C. Dugan, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION DIVISION, BRAC
CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC on the Chicago and North Western Railway (M&StL Divisions), that:

1. Carrier violated the Agreement of September 1, 1955 and Third Division NRAB Award 13799, on April 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, May 1, 2, 3, 6, 9, 10, 14, 15, 16, 17, 20, 21, 22, 23, 27, 28, 31, June 3, 4, 5, (32 dates) and also on June 7, 10 and 12, 1968, at Monmouth, Illinois.

2. Carrier shall now compensate agent-telegrapher M. D. Logan a call payment (three hours' pay) for the dates involved as listed above, on which the violation occurred.

3. Carrier shall compensate agent-telegrapher M. D. Logan a call payment (three hours' pay) on each date subsequent to June 5, 1968, on which the violation occurred. These dates to this writing are June 7, 10 and 12, 1968.

EMPLOYEES' STATEMENT OF FACTS:**(a) STATEMENT OF THE CASE**

The dispute involved herein is predicated upon various provisions of the September 1, 1955 Agreement as amended and supplemented, and is by this reference made a part hereof. The claim was handled in the usual manner, including conference November 27, 1968, up to and including the highest officer of the Carrier designated to handle claims and grievances, and remains unsettled.

The controversy arose on various dates in April, May and June, 1968, as set forth in the Statement of Claim, because Carrier permitted a Section Foreman to copy train lineups from the Train Dispatcher, allegedly in violation of the parties' Agreement.

The Section Foreman received and copied train location report (track car lineups) direct from the Train Dispatcher in the absence of the regular agent.

After giving the track lineup, the train dispatcher would then ask one of the operators to read it back, and the other operators on the line would then be required to acknowledge that their copy was correct.

At Monmouth, on the dates involved, the train dispatcher did not ring Monmouth because he knew the agent was not on duty. However, the section foreman decided, on his own, without instructions from anyone, that instead of waiting until 8:00 A. M. for the agent to come on duty and give him a new track lineup, he (the section foreman) would just get on the phone at 7:30 A. M., when he knew the track lineup was being issued, and listen in. The train dispatcher did not know the section foreman was listening in, and he did not acknowledge, as operators were required to do under the procedure in effect. He merely made out his Form 153 and left a copy at the office at Monmouth.

Neither the chief train dispatcher nor the Division Superintendent had any knowledge of the section foreman copying an alleged "track lineup" at Monmouth until the General Chairman submitted these claims to the Division Superintendent in his letter of June 6, 1968, which was received by the Superintendent on June 11, 1968. An investigation was made, and it was found that the section foreman was listening in to the dispatcher at 7:30 A. M. at Monmouth, and making out his Form 153 without permission. On June 24, 1968, the assigned starting time of the claimant agent-telegrapher at Monmouth was changed from 8:00 A. M. to 7:00 A. M., and his assigned hours thereafter were from 7:00 A. M. to 3:00 P. M. Subsequent to that date, the claimant copied the track lineup at 7:30 A. M. and gave it to the section foreman.

Neither the claimant nor the General Chairman made any attempt to correct this situation before submitting these time claims to the Superintendent in the General Chairman's letter of June 6, 1968. As indicated by what occurred, the Superintendent and chief train dispatcher were willing to correct the situation as soon as it was called to their attention.

Since the section foreman performed this work without instructions from the carrier, and without authorization from the train dispatcher, the claims have been denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization claims that Carrier violated the Agreement herein when it permitted a Section Foreman to copy train line-ups from the Train Dispatcher on 35 different dates, from April 15 through June 12, 1968 at Monmouth, Illinois, when a telegrapher was not on duty. Two telegrapher positions exist at said location with hours of 8:00 A. M. to 4:00 P. M. and 8:00 P. M. to 4:00 A. M. The Section Foreman commenced his work duties at 7:30 A. M., when a telegrapher was not yet on duty.

The Organization's position is that the work in question, namely, the copying of train line-ups, belongs exclusively to telegraphers on this particular property and, therefore, Carrier violated the Agreement when the Section Foreman copied train line-ups on the dates in question.

We are relegated to considering only charges and contentions raised on the property, and the record discloses that Carrier on the property con-

tended that the second trick telegrapher left line-ups on the dates in question for Section Foreman Flynn, which were valid up to 9:00 A. M., that the said Section Foreman took it upon himself to copy the line-ups on the dates in question when he had in his possession at the time a line-up valid until 9:00 A. M.

Therefore, the issue before us is whether or not the act of the Section Foreman in taking it upon himself to copy said line-ups, although he could have used the valid line-up left by the second trick telegrapher on each date, constituted a violation of the Agreement.

We think that the Agreement was violated herein. The mere fact that Carrier's Section Foreman took it upon himself to copy train line-ups even though he had a valid line-up from which to work from at the time does not excuse the violation in this instance.

As was said by this Board in Award No. 10527:

"... we must first dispose of the contention of the Carrier that Conductor Pressley made the call at Chehaw of his own volition and consequently the claim should not be allowed. This contention is disposed of by Award 1220 (Tipton) and Award 2313 (Rudolph) in which it has been held that the Carrier's business can only be performed by its agents and since they are performing work in the furtherance of their master's business, the Carrier is responsible for their acts."

See also Award No. 12309.

Finding that such work performed by the Section Foreman in this instance was not outside the scope of the Section Foreman's job duties, and finding that said acts of the Section Foreman bind the Carrier, it is our conclusion, therefore, that Carrier violated the Agreement and the claim will be sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1970.

**CARRIER MEMBERS' DISSENT TO AWARD 18003,
DOCKET TE-18306 (Referee Paul C. Dugan)**

Award 18003 is erroneous, contrary to precedent of this Division, and we dissent.

It is acknowledged that on the dates involved when the section foreman listened in as the dispatcher was giving a line-up to other stations, the foreman had valid line-ups good until 9:00 A.M., which had been received and copied by a telegrapher. There was no necessity for his obtaining additional line-up when he came on duty, in order to perform his work, and no one, including the train dispatcher, knew that he had copied the line-ups until the claim herein was filed. To penalize the Carrier for the actions of the foreman in such circumstances is contrary to the well-established principle that voluntary performance absent direction or authority cannot be used as a basis for claim of Agreement violation. (Awards 16837, 16469, 14399, 13803, 12951, 12907, 12646, 12382, 10549, 10050, 9847, among others.) The claim should properly have been denied.

**P. C. Carter
G. C. White
R. E. Black
W. B. Jones
G. L. Naylor**