

Award No. 18368
Docket No. TE-18711

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

**NORFOLK AND WESTERN RAILWAY COMPANY
(LAKE REGION)**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Norfolk and Western Railway (Lake Region), TC-5712, that:

1. Carrier is violating the Agreement between the parties when, it required and/or permits employes having no rights thereunder to use the telephone to receive "OS" of trains and instructions on time crews are to be called at Peru, Indiana.

2. Carrier shall, as a result, compensate H. D. Monnot, a call payment for each date violation occurs, commencing February 10, 1968.

CARRIER DOCKET: 30-24-706 — BU-13878-18

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties, effective January 1, 1959, as amended and supplemented, is on file with your Board and by this reference is made a part hereof.

Originally entered into by the New York, Chicago and St. Louis Railroad, and the Order of Railroad Telegraphers representing the telegrapher employes on the Nickel Plate, Lake Erie and Western and Clover Leaf Districts, Carrier merged with the Norfolk and Western Railway and as a condition thereof the Norfolk and Western Railway agreed to assume all obligations thereunder as though it were an original party. The Organization merged with and became the Transportation-Communication Division of the Brotherhood of Railway and Airline Clerks. The Agreement has been maintained in full force and effect throughout.

Claim was timely presented, progressed, including conference with highest officer designated by Carrier to receive appeals, and has remained declined. The Employes, therefore, appeal to your Honorable Board for adjudication.

The Employees' time limit for handling this claim had been extended from time to time up to December 31, 1969 for further handling if they so desired.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to June 17, 1964, telegraphers were employed on a 24 hour basis at Peru, Indiana. Subsequent to that date, Carrier abolished the third shift Operator-Clerk position; re-arranged the hours of the first shift Operator-Clerk position from 9:00 A.M. to 5:00 P.M.; the second shift Operator-Clerk position from 7:00 P.M. to 3:00 A.M. and required the first shift Operator-Clerk to copy and receive train orders and leave them at a designated place to be picked up by train crews after the Operator-Clerk went off duty. Carrier allowed claims filed by the Organization as a result of train crew members handling train orders. Carrier then re-arranged the hours of first trick Operator-Clerk from 10:00 A.M. to 6:00 P.M. and the hours of second trick Operator-Clerk to 1:00 A.M. to 9:00 A.M. No Operator-Clerk was on duty from 6:00 P.M. to 1:00 A.M. It appears from the record that the alleged violation concerns itself with Train No. 83 which originates at Michigan City, Indiana, 84 miles North of Peru, Indiana, and terminates at Indianapolis, Indiana, 70 miles South of Peru. The train and engine crew of Train No. 83 are changed at Peru and this change requires a 90 minute advanced notice be given the crew at Peru. Argos, Indiana is approximately 36 miles North of Peru, Indiana. The Clerk on duty is advised of the approximate arrival time of Train No. 83 at Peru; the dispatcher at Muncie so advises the Clerk at Peru who then calls the crew. The Organization contends that the transmittal and reception of this type message is reserved exclusively to Telegraphers. Carrier contends that the Scope Rule involved herein is general in nature and that custom, practice and tradition allow other than Telegraphers to transmit and receive these messages. The Organization contends that the Telegrapher at Argos calls the Clerk at Peru. Carrier contends that if the Crew for Train No. 83 at Peru is to be called before 2:30 A.M., the dispatcher at Muncie so advises the Clerk at Peru, who in turn calls the crew accordingly.

The purpose of the messages involved in this dispute was to ascertain the time for calling a crew to handle the train South from Peru. These messages did not purport to reroute, initiate, terminate, delay or accelerate a train and, therefore, did not pertain to a train movement. These messages were for the sole and only purpose of supplying information to a crew in order that the affected crew could more efficiently perform their duty of being ready to report on time. This type message is not reserved to Telegraphers, unless Carrier has historically, traditionally and customarily conferred such messages on Telegraphers. The Organization contends that there is no need to show such custom on a system wide basis for the reason that only one point is involved in this dispute and that a similar situation does not exist elsewhere on this property. This contention is disputed by Carrier and, therefore, the question to be resolved is whether or not the Organization has the burden of proving a system wide practice, or does the past practice at Peru only need be proven.

We have carefully reviewed all of the cited Awards touching on this question and conclude that the better reasoned Awards require proof of exclusivity on a system wide basis — not one point only — when the Scope Rule does not specifically confer the involved work on Claimants. See Awards 10918, 11882, and 11885. It has already been concluded that the involved messages are not reserved exclusively to Telegraphers in the Scope Rule. The

Organization did not attempt to prove exclusivity on a system wide basis. Therefore, having failed to sustain their burden of proof, this claim will 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 29th day of January 1971.