

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19346  
Docket Number TE-17570

Joseph E. Cole, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
(Freight Handlers, Express and Station Employees  
((Formerly Transportation-Communication Employees Union)  
(  
(Illinois Central Railroad Company

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

1. Carrier violated the Agreement between the parties when it required or permitted employees not covered by the Agreement to communicate information of record governing the movement of trains by means of radio-telephone.

2. Carrier shall compensate employees listed below who hold positions at Duquoin, Illinois, a call for each date listed following their names:

Agent H. Herman - October 31 and November 10 and 13, 1966

Second Shift Operator W. A. Ellermeyer - October 27 and  
November 10, 16, 23, 1966.

Third Shift Operator J. Maple - November 30, 1966

Relief Agent B. J. Lipton - November 14, 17, 18, 1966

OPINION OF BOARD: Prior awards, involving these parties, have resolved issues similar to those of the instant case. Those awards make it clear that the Agreement is not violated when employees other than telegraphers use the telephone, unless such use involves a communication relating directly to the movement of trains or otherwise can be correctly described as a communication of record.

It is observed that the "Note" to Rule 4C removes an inquiry about the time of another train from the restrictions of this rule, unless such inquiry is used in connection with train movement.

The present claim involves fifteen instances where train crews conversed by telephone with various employees, none of whom were telegraphers, about a variety of subjects. Some of these conversations concerned the picking up or setting out of cars. As was held in recent Award 19285, such use of

the telephone is not reserved exclusively to telegraphers. Some of the conversations were inquiries as to the time of other trains. As observed above, such inquiries are proscribed by Rule 4C only if they are used in connection with train movements. Under such a condition, the burden of establishing the use to which the inquiry is put rests with the employees. A careful study of the record convinces us that this burden has not been met, and consequently those claims involving such inquiries must be denied for lack of proof.

Some of the conversations did, in our opinion, relate directly to the movement of trains and therefore amounted to violation of the agreement.

In conformity with the above, without repeating the details of each instance, and without discussion of the discrepancies between certain of the facts and the claim as presented to the Board, it is our decision that Claimants be awarded one call payment each, as follows:

Claimant Ellermeyer, October 27 and November 16, 1966  
(Employees' items (1) and (10), their statement  
of facts).

Claimant Herman, November 13, 1966 (Employees' item (6)).

Claimant Lipton, November 14, 1966 (Employees' item (9)).

In all other respects the claims 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 violated to the extent indicated in the Opinion.

A W A R D

Claims sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*E. A. Kellum*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of July 1972.