

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19500  
Docket Number TE-17511

Robert M. O'Brien, Referee

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

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

1. The Carrier violated and continues to violate the terms and intent of the current Telegraphers' Agreement, commencing 12:01 a.m., March 5, 1964, and continuing each eight (8) hour shift three shifts each date thereafter until violation has ceased, when it requires or permits employees not subject to said Agreement to handle communications of record by telephone direct to the S.P. Chief Dispatcher's office at Roseville, California.

2. As a consequence of said violations, the Carrier now shall be required to:

(a) Cease the violations and restore the work to the employees entitled to perform it in accordance with our Agreement.

(b) Commencing 12:01 a.m., March 5, 1964, compensate the senior available extra telegrapher (or if none, then the senior regular assigned telegrapher at Ogden available due to being off duty or observing a rest day), one special call at applicable overtime rate for each instance of violation, or a day's pay at applicable rate covering all violations during each shift, for each shift of each date until violations have ceased; first shift 8:01 a.m. to 4:00 p.m., second shift 4:01 p.m. to 12 midnight, third shift 12:01 a.m. to 8:00 a.m.

Penalties to be paid, as due in accordance with above, to the following regular assigned employees:

A. F. Haws, Manager-Wire Chief, assigned to work 8:01 a.m. to 4:00 p.m. daily except Saturday & Sunday; or his successor.

D. D. Terry, Second Wire Chief, assigned to work 4:01 p.m. to 12 midnight daily except Monday & Tuesday or his successor.

W. R. Godwin, Third Wire Chief, assigned to work 12:01 a.m. to 8 a.m. daily except Thursday and Friday, or his successor.

D. W. Ward, Relief Manager-Wire Chief-Telegrapher-PMO, assigned to work Friday Position 81 1st Telegrapher-PMO, Ogden, 8:01 a.m. - 4 p.m.; Saturday & Sunday, Manager-Wire Chief, 8:01 a.m. - 4 p.m.; Monday & Tuesday, 2nd Wire Chief, 4:01 p.m. - 12 midnight; Wednesday & Thursday, rest days; or his successor.

L. P. Chamberlin, Position 81, 1st Telegrapher-PMO-, Ogden, assigned to work 8:01 a.m. - 4 p.m. daily except Friday & Saturday, or his successor.

J. N. Dockter, PMO-Clerk, Ogden, assigned to work 6 a.m. to 2 p.m. daily except Saturdays and Sundays.

C. E. Swanson, 2nd Telegrapher-PMO, Ogden, assigned to work 4:01 p.m. to 12 midnight daily except Sunday & Monday, or his successor.

M. K. Segar, Relief Wire Chief-Telegrapher-PMO, Ogden, assigned to work Thursday & Friday 3rd Wire Chief, Ogden, 12:01 a.m. to 8 a.m.; Saturday, position 81 1st Telegrapher-PMO, Ogden, 8:01 a.m. to 4 p.m. Sunday & Monday, 2nd Telegrapher-PMO-Clerk, Ogden, 4:01 p.m. to 12 midnight; Tuesday & Wednesday, rest days; or his successor.

(c) Penalties to be paid in accordance with (b) above shall include the following:

For second shift March 7, 1964, to D. W. Ward, identified above, two (2) special calls each call two (2) hours at overtime rate of Manager-Wire Chief, Ogden, account violations specified in Example No. 1 in our Statement of Facts hereafter.

For third shift March 7, 1964, to M. K. Segar, identified above, one (1) special call of two (2) hours overtime rate of Pos. 81 1st Telegrapher-PMO, Ogden, account violation specified in Example No. 2 in our Statement of Facts hereafter.

For second shift March 12, 1964, to L. P. Chamberlin, identified above, for the violation specified in Example No. 3, and to W. R. Godwin, identified above for the second violation specified in the same Example, one special call of two (2) hours at overtime rate of his position each employee.

For third shift March 13, 1964, to C. E. Swanson, 2nd Telegrapher-PMO, Ogden, one special call at overtime rate his position for the two violations specified in Example No. 4-(a); and to J. N. Dockter, identified above, one (1) special call at overtime rate his position for the violation specified in Example 4-(b).

For second shift March 22, 1964, a day's pay at overtime rate his position to C. E. Swanson, identified above, for the violations specified in Example No. 5.

For second shift March 23, 1964, to D. D. Terry, identified above, two (2) special calls of two (2) hours each at overtime rate his position for the violations specified in Examples 6-(a) and 6-(b).

For the first shift, Friday, March 27, 1964, to C. E. Swanson, identified above, one special call of two (2) hours at the overtime rate of his position of 2nd Telegrapher-PMO, Ogden, account violations specified in Example No. 7.

For the second shift, Wednesday, April 1, 1964, to D. W. Ward, identified above, one special call of two (2) hours at the overtime rate of his position of Relief Manager-Wire Chief, Ogden, account violations specified in Example No. 8.

For the second shift, Saturday, April 4, 1964, to L. P. Chamberlin, identified above, two special calls of two (2) hours at the overtime rate of his position of 1st Telegraphers-PMO, Ogden, account violations specified in Examples 9(a) and 9(b).

For the second shift, Monday, April 6, 1964, to L. P. Chamberlin, identified above, one special call of two (2) hours at the overtime rate of his position of 1st Telegrapher-PMO, Ogden, account violation specified in Example 10.

For the first shift, Tuesday, April 7, 1964, to M. K. Segar, identified above, one special call of two (2) hours at the overtime rate of his position of Relief Wire Chief Telegrapher, Ogden, account violation specified in Examples No. 11 A-B-C and D.

For the second shift, Monday, April 13, 1964, to M. K. Segar, identified above, Relief Wire Chief Telegrapher, Ogden, who on this date performed relief work off assignment on position of 1st Telegrapher-PMO, Ogden, 8:00 a.m. to 4:00 p.m., one special call of two (2) hours at the overtime rate of his position, account violation specified in Example No. 12.

For the first shift, Thursday, April 16, 1964, to D. W. Ward, identified above, Relief Manager-Wire-Chief, Ogden, one special call of two (2) hours at the overtime rate of his position, account violations specified in Examples No. 13 and 14.

For the second shift, Thursday, April 16, 1964, to D. W. Ward, identified above, Relief Manager-Wire Chief, Ogden, one special call of two (2) hours at the overtime rate of his position, account violations specified in Examples No. 15 and 16.

For the third shift, Sunday, April 19, 1964, to C. E. Swanson, identified above, 2nd Telegrapher-PMO, Ogden, one special call of two (2) hours at the overtime rate of his position, account violation specified in Example No. 17.

For the first shift, Sunday, April 19, 1964, to W. R. Godwin, identified above, 3rd Wire Chief, Ogden, one special call of two (2) hours at the overtime rate of his position, account violation specified in Example No. 18.

(d) The Carrier shall further be required to consent to and cooperate in a check of Carrier's records, jointly with this Organization, to determine the facts in any dispute of fact which may arise in the course of settling this claim, including but not necessarily limited to determination of each instance of violation on each date of violation, the identity of proper claimant in each instance, applicable rate of pay for each instance, amount due to each claimant, and certification that said amount due has been paid to each claimant.

OPINION OF BOARD: The claim involves the right of Southern Pacific Company Telegraphers to perform the telephone communication work in connection with the transmission and/or reception of messages between Ogden, Utah and the Chief Dispatcher's Office at Roseville, Cal. Prior to March 4, 1964, Carrier maintained a Chief Dispatcher's Office at Ogden. Either the Car Foreman's Office of the Southern Pacific or of the Ogden Union Railway and Depot Co. (OUR&D) would inform the Ogden office of any "high-wide" loads. This information was compiled in message form given to the Telegraph Office employees at Ogden and thereafter transmitted by teletype or telephone to Roseville and various other stations. On or about February 4, 1964, the Ogden office was consolidated with the Chief Dispatcher's office at Roseville. Concurrent therewith, Car Foremen at Ogden began telephoning "high-wide" load messages direct to Roseville. These messages were formerly handled by claimants at Ogden.

The Organization contends that the communication work in question belongs to Southern Pacific Telegraphers. They are communications of record and relate to the movement of trains, it avers. They further allege that this work was reserved to Telegraphers by the Scope Rule and the Scope Rule was violated when employees not covered by the Telegraphers' Agreement performed it.

For its part, Carrier contends that the claim is without support since OUR&D employees are not employees of Southern Pacific, since the two are distinct entities; that the work in question is not reserved exclusively to Telegraphers, but is incidental to the duties of the Car Department employees; and further that the messages were not communications of record.

It is now unquestioned that in proceedings before this Board the burden rests with the Petitioner to prove all essential elements of its claim. It is also unquestioned that the Telegraphers' Agreement herein applies only to work of the Southern Pacific, in the absence of a special agreement to the contrary, of which there are none in the instant claim.

We do not believe that the Organization has adequately refuted Carrier's contention that the OUR&D is a distinct entity and that the employees thereof are not under Carrier's control. It has alleged that this is so but it has failed to come forward with probative evidence. Thus, it remains a mere assertion. Consequently, we find that the work in question belongs to OUR&D employees, is not work of the Southern Pacific, and thus not within the scope of Telegraphers' Agreement. Claimants have no interest in the work in question and no right to it. Furthermore, they have failed to prove that the work is reserved exclusively to employees covered by the Telegraphers' Agreement, and, in fact, they concede that it is not. Consequently, we will deny the claim without deciding the procedural issues raised by the Carrier.

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**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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**.

A W A R D

Claim **denied**.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *E. A. Killen*  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.