

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19849
Docket Number CL-19919

C. Robert Roadley, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Chicago and Illinois Midland Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7155),
that:

1. Carrier violated the Agreement on September 2, 9, 10 and 15, 1971, when it required Section Foreman Curry, an employee not covered by the Agreement, to transmit a message of record affecting the movement of trains from Oakford, Illinois to the Agent at Havana, Illinois.

2. Carrier shall now compensate the senior idle extra telegrapher who was available for a call, in accordance with Article 7 of the Agreement for each violation of Article 13 of the Agreement.

OPINION OF BOARD: On September 2, 9, 10 and 15, 1971 a section foreman used a telephone at a closed wayside station for the purpose of giving certain information to the telegraph operator at Havana, Illinois, 16 miles from the location of said wayside station and 30 miles from the point where all extra telegraphers are headquartered. The position of the Organization is that in so doing the section foreman transmitted messages of record in connection with train movements, and safety of equipment and employees, which is the exclusive work of telegraphers. These messages were then relayed to the telegrapher on duty at Shops Tower in Springfield, Illinois and then delivered via pneumatic tube to the Chief Train Dispatcher who issued certain train orders. Petitioner alleges that the train orders so issued were identical in language to the information transmitted by the section foremen. In support of its position Petitioner has cited Award 4516 and Awards 13290, 13291 and 13292, among others, as being controlling in this instant case.

The Carrier, on the other hand, in its declination letter dated October 27, 1971 stated:

"The general chairman has alleged that the section foreman's use on four dates violated the telegraphers' agreement when he used a telephone to give the agent at nearby Havana station information of his working limits for forwarding to the chief dispatcher. A section foreman does not annul, put up new orders, or transmit train orders, particularly those cited by the general chairman. Those cited (at the most) are considered to have been the Havana agent's transformation of data given him by the section foreman, which data

"(whether given direct to the dispatcher or given to Havana agent and transformed) was unauthoritative until received by the chief dispatcher (in this case also via another telegrapher at Springfield) for comparison and evaluation with other information he possessed before a train order could be subsequently created and issued. There is no rule, custom, tradition or practice on the C&IM exclusively reserving the use of communication systems, including telephone and radio, to any craft or class. The telephone conversations between section foreman and the Havana agent did not involve copying train orders (messages of record affecting the movement of trains) or a violation of Article 13. *****"

Article 13(A) of the Agreement states, in pertinent part:

"No employee other than covered by this schedule and train dispatchers will be permitted to copy train orders, except in an emergency. *****" (Emphasis added)

Article 1 - Scope - of the Agreement states:

"This agreement will govern the hours of service, working conditions and rates of pay of all Telegraphers (except Telegrapher-Clerk in Traffic Department), Telephone Operators (except switchboard operators), Agents (except at Pekin and Springfield), Agent-Telegraphers, Agent-Telephoners, Towermen and Levermen."

Article 7 - Calls - of the Agreement states, in pertinent part:

"Employees notified or called to perform work not continuous with the regular work period, or continuous with, but in advance of the regular work period, will be allowed a minimum of three (3) hours for two (2) hours work or less, ****."

In its Ex Parte submission to this Board the Carrier made the following statements, among others, in support of its position:

"III (a) No instructions were received by the section foreman in the instant case; these September 1971 claims arose under conditions where the record shows no communications requirement prevailed as to the manner information would be obtained and evaluated by the chief dispatcher for the issuance of the Form W portion of train orders to extra train crews.

(b) The election of the agent at Havana to construct a Form W type message from verbal information received from a section foreman neither made it a train order, work reserved to him, work reserved to a senior telegrapher, nor any other telegrapher.

"IV (b) The last position at Oakford was abolished in 1966 - without dispute. A wayside telephone has always been in use at Oakford since that date - also without claim or contention that its use belonged to the senior extra telegrapher at Shops (Springfield).

(e) The claimant 'Senior Extra Telegrapher available for a call in accordance with Article 7' is vague and ambiguous. Since adoption of the National Arbitration Award 298, all extra telegraphers have been designated as having headquarters at Shops (Springfield). None were headquartered or available at Oakford in September 1971."

The Carrier also stated, in its Ex Parte submission, its position as to the inapplicability of Awards 13290, 13291, and 13292 to the instant case, as cited by Petitioner.

Both parties have cited numerous prior awards of this Board in support of their respective positions. Petitioner relies primarily, however, upon Awards 13290, 13291 and 13292 as being controlling, in view of the fact that these awards pertained to the same parties involved in the instant case and allegedly concerned similar factual situations. In this regard it is interesting to note that in each of these three awards the Carrier Members of this Board dissented on the grounds that the messages transmitted in those cases were not messages of record "the telephoning of which was exclusively reserved to telegraphers." The Carrier, in the instant case, denied the applicability of these three awards to the case before us and this Carrier position was unrefuted by the Organization as no rebuttal to the Carrier's assertions was submitted.

Insofar as Article 1 - Scope is concerned this Rule is similar if not identical to many such Rules in that it does not define the work and is general in nature. Therefore, Petitioner to prevail must prove by competent evidence that claimant has an exclusive right to the disputed work established through tradition, historical practice and custom on the Carrier's property. See Award 14941 and numerous others.

Here again, Petitioner bottomed its position on the three Awards referred to above by stating, "It has long been settled that practice is only applicable where the Agreement is ambiguous with respect to the work involved, but where, as here, the disputed work has previously been held to fall within the Scope of the Agreement on three previous occasions, no ambiguity remains." Petitioner further stated, in this regard, as follows:

"The sole issue to be determined by your Board is whether or not telegrapher employees have the exclusive right to handle messages

"of record here involved which concerns the movement of trains, safety of employees, equipment and property, as already upheld by the Board on three previous occasions in Awards 13290, 13291, and 13292 in sustaining identical claims between the same parties." (Emphasis added)

Consequently, in regard to the question as to whether the information transmitted by the section foreman was a "message of record" the Carrier, in its submission to this Board stated, "Section Foreman Curry was neither instructed by the Carrier nor did he possess the authority to 'transmit' the 'message of record' erroneously ascribed to him by the General Chairman. The Agent, Havana, did not receive any alleged 'message of record' (train orders) from Foreman Curry." In Award 13290, the Board held that the first question to be resolved in reaching a determination was, "Is a notice of the type telephoned to the operator a message of record." On this point the Board stated, "In resolving the first question we are concerned with a communication that was specifically requested by the Chief Dispatcher 'so that all trains will have copy of this order at the effective starting time' ****." (Emphasis added) As indicated above the Carrier asserted that the section foreman had neither the authority nor was he instructed to transmit such a message. Again, this statement was not refuted by Petitioner as no rebuttal to the Carrier submission was made in the instant case. The same premise was used in determining the answer to the question as to whether the communication involved was a "message of record" in Awards 13291 and 13292.

Further, in regard to the question of exclusivity, as raised by Petitioner, the Carrier also stated, in part IV (g) of its submission, as follows:

"The Carrier has also relied upon the highest officer's final decisions in numerous cases that were not progressed (Case Nos. MP-MRAC (TC) - 64-67-68-74) to demonstrate that so-called transmission of messages, as therein and here referred to by the organization, are not exclusively reserved to telegraphers; (C&IM Exhibit 'D' - 4 sheets)."

As previously indicated herein the Petitioner did not elect to file a rebuttal statement to any part of the Carrier's Ex Parte submission, thus leaving material factual statements uncontroverted and undenied. Under those circumstances we will deny the claim. See First Division Awards 22229, 22230, 22231, and 22232 (Bailer).

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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 Employes involved in this dispute are respectively Carrier and Employes 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

On the state of the record we will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1973.