



ORT FILE: 1847
AWARD NO. 1
CASE NO. 1

SPECIAL BOARD OF ADJUSTMENT NO. 266
THE ORDER OF RAILROAD TELEGRAPHERS

VS

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM:

CLAIM NO. 1

The Carrier violated the provisions of the Telegraphers' Agreement when and because on April 15, 1949, it permitted or required a train service employe to transmit a train consist from Taylor Crossover to the train dispatcher at Scranton and further violated said Agreement when it required or permitted the yardmaster at Taylor Crossover, on the same day, to copy a similar train consist from the telegrapher at Scranton yard; in consequence of said violations D. Pignone, an idle extra employe, shall be allowed a day's pay in the amount of \$10.86.

CLAIM NO. 2

The Carrier violated and continues to violate the provisions of the Telegraphers' Agreement when and because on January 31, 1950, and on each 8-hour trick of each day thereafter, it required or permitted employes not under the Telegraphers' Agreement at Port Morris yard office to receive and transmit train consists, delay reports and train registers; in consequence thereof the three senior idle extra employes shall be allowed a day's pay for January 31, 1950 and each Calendar day thereafter until the violations cease. The records shall be jointly checked to determine the payees.

CLAIM NO. 3

The Carrier violated the provisions of the Telegraphers' Agreement when and because on March 2, 1951 it required or permitted an employe not covered by the said Agreement at Hampton Hump to transmit the consist of train SN-37 to another employe outside of the Agreement at Scranton, and continued to violate the Agreement when and because on subsequent dates the consist of SN-37 was handled in the same manner; in consequence thereof the senior idle employe under the Telegraphers' Agreement, extra in preference, shall be allowed a day's pay at each Scranton and Hampton Hump (yard) for March 2, 1951 and each day thereafter that the consist of SN-37 is so handled. The records to be jointly checked to determine the payees.

CLAIM NO. 4

The Carrier violated the provisions of the Telegraphers' Agreement when and because it permitted or required Conductor Jenkins at Taylor in charge of Extra 2132 East, to copy a work order from the train dispatcher at 12:15 A.M., April 3, 1952 at a time agent-operator John Finan was off duty but available; in consequence thereof Claimant Finan shall be allowed a "call" payment in the amount of \$5.49.

CLAIM NO. 5

The Carrier violated and continues to violate the provisions of the Telegraphers' Agreement when and because on December 20, 1952 and around-the-clock each day thereafter it has required or permitted persons outside of the Telegraphers' Agreement at Taylor Yard office to receive and transmit train consists; in consequence thereof the agent-operator shall be allowed a "call" payment for each train consist that was received or transmitted outside of his assigned hours and for those similar transactions at the yard office within the agent-operator's assigned hours the senior idle employe on a day-to-day basis shall be allowed a day's pay December 20, 1952 to May 4, 1954 the date the agent position was abolished. Thereafter and until the violations are discontinued the three senior idle employes, on a day-to-day basis, shall be allowed a day's pay, representing three 8-hour tricks each calendar day. The records shall be jointly checked to determine the payees.

CLAIM NO. 6

The Carrier violated and continues to violate the provisions of the Telegraphers' Agreement when and because on February 18, 1954 it permitted or required and continues to permit or require employes not covered by the said Telegraphers' Agreement at Secaucus Yard office to receive and transmit train consists around the clock; in consequence thereof three senior idle employes under the Telegraphers' Agreement, extra in preference shall be allowed a day's pay for February 18, 1954 representing three 8-hour tricks, and the same allowance for each calendar day thereafter as long as the violations continue. The records shall be jointly checked to determine the payees.

OPINION OF BOARD:

In each of the claims involved in this case it is contended by the Organization that the Carrier violated the Telegraphers' Agreement by permitting or requiring employees outside said Agreement to receive and/or transmit communications. Claims 1, 3, 5 and 6 arise out of the transmission and/or receipt of train consists. Claim 2 concerns the receipt and transmittal of consists, delay reports and train registers by non-schedule employees. Claim 4 deals with a Conductor copying a work order received from a Train Dispatcher.

The record indicates that telegraph service employees have handled communications of the kind here involved over the years. It is also conclusively established, however, that other employees have also traditionally handled such communications in connection with their other duties. At Taylor Crossover, the location involved in Claim 1, there has never been a telegraph service employee assigned, although Yardmasters, Switchtenders and Clerks are employed there. Communications

ORT FILE: 1847
AWARD NO. 1
CASE NO. 1

involving train consists have always been handled at this location by non-schedule employees. At Hampton Hump (Claim 3) also, there has never been an Operator position. Non-schedule employees have traditionally transmitted train consists from this point to the Dispatcher located in the passenger station at Scranton. There has never been a Telegrapher position at Secaucus Yard office (Claim 6), although the receipt and transmission of train consists at this point has been a practice of long standing. While telegraph service employees have been assigned at certain other points involved in this group of claims, the evidence indicates that the incumbents of these positions have not historically performed all of the communication work of the type here in dispute which arises at these points. The action complained of in Claim 4, involving the receipt by a Conductor of instructions from a Train Dispatcher concerning the work which the Conductor was directed to perform next, also represents a common practice on this property.

The scope rule of the controlling Agreement is general in nature, in that it lists classifications of employees but does not describe work. Thus we look to past practice on the matter at issue. It is conclusively established that telegraph service employees on this Carrier have not customarily handled communication work involving consists, delay reports, train registers and work orders to the exclusion of non-schedule employees at the locations here involved. We therefore are of the opinion and find that the actions complained of in the six claims in the subject case do not represent violations of the Agreement and must be denied.

AWARD:

Claims denied.

s/ LLOYD H. BAILER
Lloyd H. Bailer, Neutral Member

DISSENTING
W. I. Christopher, Employee Member

s/ F. DIEGTEL
F. Diegtel, Carrier Member

New York, New York
July 7, 1959