

CASE NO. 24
AWARD NO. 29
ORT FILE 277

SPECIAL BOARD OF ADJUSTMENT NO. 355

Parties: THE ORDER OF RAILROAD TELEGRAPHERS
THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT
OF CLAIM:

1. Carrier violated the agreement between the parties hereto when on October 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30 and 31, and November 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27 and 29, 1957, respectively and all subsequent dates it caused, required and permitted a Track Foreman, an employee not covered by the Telegraphers' Agreement to copy, receive and deliver track car line ups Form 1089-D over the telephone at Remington, Ohio.
2. Carrier be required to compensate an idle telegrapher, extra in preference, for pay for one day (8 hours) for each date listed, and all subsequent dates on which similar violations occurred.
3. Carrier be required to permit a joint check of its records to determine the number of violations at Remington subsequent to those listed.

FINDINGS:

This is the first of a series of cases involving the use of the telephone by track foremen for the purpose of copying track car lineups.

One of the sections of the Agreement involved here is the "Interpretation to Article 33". Suffice it to say, this "interpretation" in the applicable agreement is identical in text with that appearing in the predecessor agreement. Due to other contract changes it appears in the current agreement as the Interpretation to "Article 34", and reads as follows:

"During period of construction, other than railroad construction, such as repairing or rebuilding highways, bridges, grade crossing elimination, etc., where contractors or others engaged in construction work require information by use of telephone regarding location of trains, etc., for the protection of workmen, construction equipment, etc., the provisions of this Article will apply and telegraphers or telephoners will be employed.

"This interpretation is not intended to change existing practice of Maintenance of Way men obtaining such information by telephone when it is necessary to open the track for maintenance, repairs, etc."

Organization argues that revised Article 35 is also involved in these cases, and asserts "It is also quite obvious that this Carrier has gone to extreme lengths to circumvent the new revised Article 35 and the Awards of Special Board No. 132. xx This Carrier does not deny that it has the knowledge that the section crews

are using the telephone on a continuing basis to perform acts which are definitely in violation of revised Article 35 of this Agreement. ***."

So far as the facts before us in this case are concerned, no operator position has existed at Remington since July 1, 1928. Award 6364 of the Third Division held:

"As to alleged violations by Carrier in permitting motor car operators to use the telephone where no operators are on duty, we hold such is not a violation of the Agreement by Carrier, and reaffirm our holding in Award 5023. ***."

Special Board of Adjustment No. 132, in its award in Docket 33 of that Board, states:

"This holding does no violence to the conclusion reached by the Third Division in Award 6364, for there were no operators employed at the point where the track car lineups involved in that Award were copied."

No operator having ever been employed at Remington, a denial award is in order.

A W A R D

Claim denied.

/s/ Edward A. Lynch
Edward A. Lynch
Chairman

/s/ B. N. Kinkead
B. N. Kinkead
Employee Member
Dissenting

/s/ T. S. Woods
T. S. Woods
Carrier Member

Dated at Baltimore, Maryland this 31st day of August 1961.

