Award No. 12

Docket No. 12

SPECIAL BOARD OF ADJUSTMENT NO. 553

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

ROY R. RAY, Referee

STATEMENT OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines), that:

Claim No. 1

1. The Carrier violated the terms of the parties' agreement at Eugene, Oregon, when at 2:00 PM., August 4, 1959, it required or permitted a Scale Weight Clerk, an employe not covered by the Telegraphers' Agreement at Eugene Yard, to transmit a message of record over the telephone to the Agent-Telegrapher at Sutherlin, Oregon.

2. The Carrier shall, because of the violation set forth in Item 1 above, compensate L. E. Hatch, Telegrapher-Clerk, Eugene, Oregon, who was available, ready, and willing to perform this work for one special call.

Claim No. 2

1. The Carrier violated the terms of the parties' agreement when at 12:06 PM., December 2, 1959, it required or permitted Ray Doucett, a member of Extra Gang No. 1, an employe not covered by the Telegraphers' Agreement at Parran, Nevada, to transmit a message of record over the telephone to a clerical employe at Ogden, Utah, also not covered by the Telegraphers' Agreement.

2. The Carrier shall, because of the violation set forth in Item 1 above, compensate J. N. Dockter, 2nd shift Telegrapher-Clerk-PMO, who was available, ready, and willing to perform this work for one special call.

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"Claim No. 3

"1. The Carrier violated the terms of the parties' agreement at Hazen and Lovelock, Nevada, when on November 11 and 12, 1959, it required or permitted Extra Gang Foreman Frank Harmer, an employe not covered by the Telegraphers' Agreement at Hazen Nevada, to transmit a message of record over the telephone to the Roadmaster at Lovelock, Nevada, also an employe not covered by the Telegraphers' Agreement.

2. The Carrier shall, because of the violations set forth in Item 1 above, compensate:

(a) D. A. Keely, Agent-Telegrapher, Fernley, Nevada, for one special call each date, November 11 and 12, 1959.

(b) J. K. Browning, 1st Telegrapher-Clerk, Lovelock, Nevada, for one special call each date, November 11 and 12, 1959.

Claim No. 4

1. The Carrier violates the terms of the parties' agreement at Pittsburgh and at Oakland 16th Street, Oakland, California, when it requires or permits employes not covered by the Telegraphers' Agreement at these locations to transmit and/or receive messages of record over the telephone.

2. The Carrier shall, because of the violations set out in Item 1 above, compensate:

(a) F. A. Jurik, regular assigned 3rd Telegrapher-Clerk, Pittsburgh, for one special call on each date, October 20, 21, 22, 26, 27, 28, 29; November 2, 3, 4, 5, 9, and 10, 1959.

(b) C. C. Jolly, regular assigned Telegrapher-Clerk Relief 32, for one special call each date, October 23 and 30 and November 6, 1959.

(c) Harriett E. Keough, regular assigned 3rd Telegrapher-Clerk, Oakland 16th Street, for one special call each date, October 20, 21, 26, 27, 28; November 2, 3, 4, 9, and 10, 1959.

(d) H. F. Glaeser, regular assigned Telegrapher-Clerk, Relief 29, for one special call each date, October 22, 24, 29, 30; November 5 and 6, 1959.

3. The Carrier shall, in addition to the foregoing, for each date subsequent to those set out in Items (a) through (d) above, as reflected by supplemental claims filed by letter dated December 16, 1959, on which parties not covered by the Telegraphers' Agreement at the station locations set out in Item 1 of this Statement of Claim, transmitted and/or received messages

"of record over the telephone in the manner herein described, and on date subsequent thereto, compensate the regular assigned telegraphers listed in Item 2, or their successors, in accordance with applicable rules.

Claim No. 5

1. The Carrier violated the terms of the parties' agreement when at 1:40 P.M., on August 21, 1959, it required or permitted Clerk Dorothy Samsel, an employe not covered by the Telegraphers' Agreement at Portland, Oregon, to transmit a message of record over the telephone to Clerk Sutfin, also an employe not covered by the Telegraphers' Agreement at Oakland, California.

2. The Carrier shall, because of the violation set out in Item 1 above, compensate R. H. Bell, regular assigned 2nd Wire Chief-Telegrapher, Oakland 16th Street, Oakland, California, for one special call."

OPINION OF BOARD:

This case involves five separate and distinct claims each of which charges that employes other than telegraphers used the telephone for the purpose of transmitting messages or information which should have been transmitted only by persons covered by the Telegraphers' Agreement.

The Organization takes the position that the messages involved in all the claims were communications essential to the operation of the Railroad and therefore belonged to the telegraphers. It specifically emphasizes that messages need not relate to train movements in order to belong to telegraphers; and says that the Scope Rule also includes communications of record and other communications which through tradition, custom and practice have been performed by telegraphers. It contends that custom and practice support its position here.

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Carrier takes the position that in all of the instances involved in these claims the employes were merely using the phone for the purpose of exchanging information relating to their regular assigned duties. It says that the telegraphers have no exclusive right to the use of the telephone and that none of the communications involved fall within the Scope Rule, because they do not relate to the movement of trains and that there is no custom or practice on this property for telegraphers to perform this type of work to the exclusion of other employes.

The Scope Rule is general in nature. It lists positions but does not define in specific terms the work covered. Before the advent of the telephone the transmission of messages like those in this case undoubtedly would have been by use of the telegraph. But awards of the Third Division have made it clear that this is not the sole measurement of the telegrapher's work. Not all communication work is reserved to the Telegraphers, nor is the telephone the exclusive instrument of that craft. It now appears well established that work belongs to the Telegraphers if it falls within one of the following categories: (1) relates to the control or movement of trains or safety of passengers or products, (2) is a communication of record as that term has been used in the decisions, or (3) by tradition, custom and practice on the property has been performed by telegraphers to the exclusion of other employes. Awards 10492, 11812, 12383 and many others. The burden of proof is, however, upon the employes and when they rely on custom and practice they must show not merely that telegraphers customarily perform the type of work but that they handle the messages to the exclusion of

all others. With these principles in mind we turn to the individual claims.

CLAIM NO. 1

A scale weight clerk at Eugene, Oregon telephoned gross, tare and net weights of three cars to the agent-telegrapher at Sutherlin, Oregon, where the cars originated. Eugene is the weighing point. The Organization says the scale weights were for the purpose of making a waybill and that waybills are a matter of record. Carrier says the main purpose was so that the shippers would know the weight of the cars.

The Organization has relied on two awards of Special Adjustment Board 355 where a clerk gave scale weights on two cars requested by an agent at another station. Claim was sustained in both cases without any assigned reason. But the question in both cases seems to have been whether it was a message under Rule 35 of the Agreement which prohibited persons other than telegraphers from sending messages. We do not regard these cases as persuasive here.

Carrier relied upon Award 12612 of the Third Division where the clerk telephoned a message requesting release times on three specified cars and the Agent-Telegrapher gave the times. That Board said this was not a communication of record and did not control movement of trains or affect safety of passengers or property. Claim was denied.

In our judgment the message as to scale weights did not involve the control or movement of trains. It was not shown to be a communication of record as that term has been used by the Third Division.

The Organization has failed to prove that by custom and practice on this property this type of communication has been performed exclusively by telegraphers. The claim must therefore be rejected.

CLAIM NO. 2

A member of Extra Gang No. 1 at Parran, Nevada telephoned the clerk at Ogden, Utah and gave him the gasoline report for Gang No. 1 for November 9 to 25. It showed amount on hand at beginning of the period, amount received, amount used on highway and on company property and amount on hand at end of period. The Organization says that this was a permanent type of record and that the telegrapher at Parran could have transmitted this without any expense to the Company for a call. The Organization cites no cases of a like or similar nature to support its position.

Carrier says that the purpose of the report was for the computation of taxes due in Nevada. While the report is a recent innovation, Carrier argues that it is similar to numerous other reports such as the labor reports which have long been in use and telephoned by the various crews. In this connection it cites Award 12613 on this property where a member of an extra gang telephoned the work report for his gang for payroll purposes. Award 12624 is another case where a section foreman telephoned the clerk in the Roadmaster's office the weekly labor report which said "removing weeds 72 hours, Camp 8 hours, janitor 6 hours, balance ordinary track repairs." In both cases the Board held that these were not communications of record and not concerned with the movement of trains. Claim was denied in each

instance. The facts in those cases are sufficiently similar to be persuasive here. The gasoline report certainly did not deal with the operation of trains and we are not convinced that it was a communication of record. Since there has been no proof that it has been the custom and practice on this property for this type of report to be handled exclusively by telegraphers the claim is without merit.

CLAIM NO. 3

The foreman of an extra gang at Hazen, Nevada telephoned the Roadmaster's office at Lovelock, Nevada concerning movement of cars from Hazen to Upsal and those to remain at Hazen. Car numbers were given.

The Organization relies upon Award 6693 of the Third Division. In that case a typical message telephoned by the clerk was: "Pick up ATSF 211272 Carload of yarn at mill and place ATSF 30559 and DRGW 68917 at Duck Platform for duck loading Saturday P.M." This was held to be a communication of record and within the Scope Rule.

Carrier argues that since the actual pick up of the cars was arranged by the Roadmaster at Lovelock by means of a telegram addressed to the Train Dispatcher at Ogden, the telephoning by the foreman at Hazen did not violate the Scope Rule. We cannot agree. Carrier made the same argument in the Docket involved in Award 12625 where it said: "Simply a telephone conversation . . . . . between the Maintenance of Way Foreman at Lakeside and Roadmaster's Clerk at Ogden whereby the former advised the latter to arrange for certain passenger trains to make unscheduled stops at Lakeside on certain dates to entrain and detrain passengers

(employes) and no provision of the Telegraphers' Agreement allocates or reserves these duties to telegraphers, but on the contrary, they are duties of the employes that performed same." This reasoning was rejected by the Board, which held the message to be "clearly a communication of record", relying upon Award 8663. Awards 12613 and 12615 cited by Carrier are not in point here.

We are of the opinion that the message telephoned in this case was a communication of record and belongs to the telegraphers under the principles announced above. The claim must be sustained.

CLAIM NO. 4

On various days in October and November 1959, a car clerk at Pittsburg telephoned to a clerk in the Car Distributor's office at Oakland-16th St. giving car information such as: cars loaded, nature of contents, number of cars ordered and number on hand. Illustrative of the type of information given is shown by the call of November 2, 1959:

> "Loaded sulphate 3, brick none,
> Shell chemical mty BH box on hand 7,
> order 1. Mty 50 ft. boxes on hand 3.
> Shell chemical going to use covered
> hopper".

The Organization insists that this type of telephone conversation communication belongs to telegraphers, but it has referred to no specific authority supporting its position.

Carrier, on the other hand, says that this type of communication has been made by clerks on this property for some forty years. This contention is supported by a mass of evidence at pages 141-173 of

the record and by Decision #18 of Special Board of Adjustment, dated October 12, 1931. While the Board members were equally divided and no majority decision was rendered, the facts as stated by the Board confirm Carrier's contention as to past practice.

Carrier's position is also supported by Award 11805 of the Third Division involving a fact situation like that in the present case. A yard clerk at Netherlands, Kentucky telephoned the Car Distributor at Huntington, West Virginia and gave him a car situation report which was as follows: "5 loads out, 4 empties in, 4 to be cleaned, 5 ordered yesterday". In answer to Petitioner's argument that the communications were messages of record and restricted to telegraphers the Board replied: "These messages did not affect the operation of trains nor did they affect the safety of persons or property which by their very nature should be made of record". The claim was denied because Petitioner failed to show that the work in question had been by custom and practice performed exclusively by telegraphers.

In view of Award 11805 and Carrier's strong showing that clerks have performed this work for many years, it is clear that there is no basis for holding that the work comes within the Scope Rule. The claim must, therefore, be denied.

CLAIM NO. 5

A clerk in the Portland, Oregon office telephoned the Chief Clerk in Oakland, California office requesting that a previous mailgram request for a limousine to meet a particular passenger be canceled.

The Organization argues that since this was a service to a passenger the transmission of the message should be made only by a telegrapher. Carrier says this was merely a cancellation of what would have been a courtesy to a passenger and that there was no occasion to use a telegram.

The only case with facts at all similar to that before us is Award 12704. There a clerk, by telephone, transmitted a message from the conductor of a passenger train to the Station Master at Washington, D.C. It stated the number of passengers bound for Trenton, N.J. and asked that a Red Cap meet the train. The Board held this was not a message of record nor did the conversation affect the movement of a train. Petitioner offered no proof of a practice and custom showing the disputed work to have been performed exclusively by telegraphers. The claim was denied.

We are convinced that the present claim is analogous to 12704. The conversation here cannot be considered a communication of record. It certainly did not affect the operation of trains. The Organization has no proof of an exclusive past practice for telegraphers to handle such messages. The claim is without merit.

FINDING

The Agreement was violated as to Claim 3.

There was no violation in Claims 1, 2, 4, 5.

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AWARD

Claim No. 3 is sustained.

Claims 1, 2, 4 and 5 are denied.

SPECIAL BOARD OF ADJUSTMENT NO. 553

Roy R. Ray, Chairman

D. A. Bobo, Employe Member

L. W. Sloan, Carrier Member

San Francisco, California

June 28, 1965