

SPECIAL BOARD OF ADJUSTMENT NO. 132

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

AWARD IN DOCKET NO. 33

STATEMENT
OF CLAIM:

1. Carrier violated the agreement between the parties hereto when on January 2, 3, 5, 8, 9, 12, 15, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31, and February 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 23, 26, 27, and 28, respectively, 1951, it caused, required and permitted section foremen, employees not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) track car line-ups at Otter, West Virginia, which work was and is solely reserved to employees covered by the Telegraphers' Agreement.

2. Carrier be required to permit a joint check of its records to determine the number of violations occurring subsequent to the foregoing dates.

3. Carrier be required to compensate the employee who was working as agent-operator at Otter on the dates listed and on subsequent dates, one special call for each and every day date shown above, and all subsequent dates on which a joint check of the records shows the Agreement to have been violated.

FINDINGS:

There is an agent-operator position at Otter, West Virginia, with hours from 8 A.M. to 5 P.M., open Monday through Friday. On the dates listed in the Statement of Claim the Section Foreman at Otter copied track car line-ups over the telephone from an operator located at Gassaway prior to the time when the Operator at Otter came on duty.

The employees cite practically the same rules in support of this claim as those mentioned in our Findings in Docket #1.

With respect to item (1) of the Statement of Claim, carrier contends that it has been an established practice on this property to obtain track car line-ups in the same manner as received by the Section Foreman on the dates of claim and further that the Third Division, National Railroad Adjustment Board, in its Award 6364, has ruled that it is not a violation of the applicable Telegraphers' Agreement for motor car operators to use the telephone to obtain line-ups. Carrier further contends that item (2) of the Statement of Claim should not be allowed and that any claim for subsequent dates should be disregarded on the ground that neither of such items were included in the claim as handled on the property.

Despite the practice which the Carrier contends was in effect on this property, the employees have produced copies of letters indicating that the Carrier has paid claims where employees other than telegraphers have copied track car line-ups at points where telegraphers were stationed or where telegrapher positions had been abolished. Such settlements in our opinion clearly indicate that the Carrier has recognized that under the Scope Rule and within the intent and purposes of Article 35 where track car line-ups are copied over the telephone at a point where an operator is stationed or where an operator had been employed that work should be performed by an employee covered by the Telegraphers' Agreement. The action of the Carrier in those situations appears to be quite consistent with the views

expressed by Carrier's Assistant to Vice President in a letter dated November 23, 1920 to the Telegraphers' General Chairman, wherein (speaking of the language of Article 35) he stated:

"This language seems to be very plain and unequivocal and has always been construed by me at least to mean that Operators would not be displaced by trainmen or others handling their business by telephone where it had previously been handled by operators or where it would be handled by operators."

Accordingly, we hold that it was a violation of the Telegraphers' Agreement for the Section Foreman at Otter to copy track car line-ups over the telephone from the operator at Gassaway outside the assigned hours of the operator at Otter. 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 line-ups involved in that Award were copied.

The Memorandum of Conference held between the Superintendent and Local Chairman indicates that claim was made for all "subsequent dates." In that respect the claim before this Board and that handled on the property is identical and hence we see no bar to this Board sustaining claims for subsequent dates. However, at no time on the property did the employees request a joint check of the Carrier's records to determine the number of violations occurring subsequent to the dates listed. Judging from the detailed information which the employees have set forth in this docket with respect to the listed dates the employees have sufficient information with respect to occurrences on dates following those specified to establish subsequent violations. At this late date, particularly inasmuch as a joint check was not requested on the property and none is required for the purpose of resolving a factual conflict to enable this Board to arrive at a decision, we find no basis upon which to direct a joint check. Accordingly, part 2 of the claim will be denied.

AWARD

Claims (1) and (3) sustained except to the extent that claim (3) involves a joint check. Claim (2) denied.

/s/ Francis J. Robertson
Francis J. Robertson
Chairman

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

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

Dated at Baltimore, Md., this
25th day of April, 1957.