

SPECIAL BOARD OF ADJUSTMENT NO. 186

AWARD NO. 2

Organization's Files

R-958
R-961
R-959
R-963
R-964

Carrier's Files

TE-11-56
TE-12-56
TE-13-56
TE-14-56
TE-15-56

STATEMENT OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on The Denver and Rio Grande Western Railroad that,

"1. The Carrier violated the agreement between the parties when it required or permitted employees not under the agreement to perform work belonging to employees under the agreement,

"2. As a result of such violations Carrier be required to pay an amount equivalent to one day's compensation, on the dates next following their names: H. O. Williams, February 20 and 23, 1956; R. L. Smith, February 27, 28, 29; March 1 and 2, 1956; G. E. Wheeler, March 3, 5, 6, 10 and 12, 1956; S. D. Macoskey, February 23, 24, 27, March 23 and 26, 1956; H. M. Routh, February 27, 1956; F. R. Morgan, February 27, March 12 and 26, 1956; J. J. Flynn, March 6 and 12, 1956; O. P. Simpson, March 12, 1956; J. G. Harrington, March 16, 1956; E. T. Murdock, March 25, 1956."

FINDINGS: This claim involves the use of the dispatcher's telephone circuit to transmit messages to the dispatcher by section foreman, signal maintainers, track patrolmen, carmen and others outside the Telegraphers' Agreement, from various telephone booths connected with the circuit at points where no telegrapher was employed to advise the dispatcher as to the status of their work and the resulting condition of track or signals or cars being repaired. Nine of the calls here complained of resulted in the issuance of train orders; eight of them were reports that a bad order car was ready to move; six were reports that a slide fence was again in order; one resulted in a message to investigate; and one was the conveyance of unnecessary information.

Award No. 2 (Continued)

It is the position of the Organization that all work of telephone operators is under the agreement and that these calls were the proper work of a telephone operator and that they constituted communication work in lieu of telegraphy and that they resulted in temporary records, hence were communications of record.

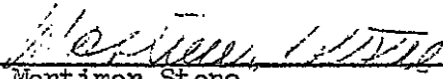
It is further urged that Carrier violated Article V, Section 1 (a) of the Agreement of August 21, 1954, when it denied the claim without stating the reasons in writing. The only reason stated in making the claim was that it was a violation of the Scope Rule of the Telegraphers' Agreement without any statement as to the grounds for such contention and in such case we think the answer of the superintendent that he could not see any violation was sufficient compliance with the rule.

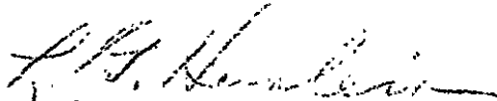
None of the messages shown in the record here complained of were train orders or matters relating to the control of transportation or concerned the operation or movement of trains, hence the communication of these messages to the dispatcher at points where no operator was employed was not work which belonged exclusively to telegraphers as in substitution for that formerly performed by telegraphers but rather was an extension of the means and methods of communication other than that belonging exclusively to that craft.

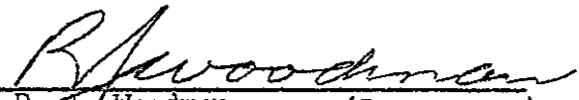
Further, it is not disputed that for more than 40 years the practice here complained of had existed without claim that it was in violation of the Agreement and we think such practice in the application of the agreement to the communications before us where the line of demarcation is vague and uncertain shows an agreed interpretation of the agreement between the parties which should guide us in the present claim.

Award No. 2 (Continued)

AWARD: Claim denied.


Mortimer Stone
Chairman, Neutral Member


L. G. Heinlein
Carrier Member


R. J. Woodman (Dissenting)
Organization Member

Dated at Denver, Colorado, August 22, 1957.