

Award No. 14

Docket No. 14

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 Agreement between the parties hereto at Phoenix Yard Office, Phoenix, Casa Grande, Coolidge, Mesa, Wellton, Hayden Jct., Tovrea, Rillito, Yuma, Tucson and Tolleson, Arizona when commencing March 26, 1959, and on dates subsequent thereto, it permits or requires employes not covered by the Telegraphers' Agreement to transmit and/or receive messages of record over the telephone.
- "2. The Carrier shall, because of the violations set forth in Item 1 of this Statement of Claim, compensate the following claimants as hereinafter set forth:
 - (a) R. Reed, regularly assigned 3rd shift Telegrapher-Clerk, Casa Grande, Arizona for one special call for each date March 26, April 7, 8, 22, 1959.
 - (b) K. A. West, extra Telegrapher assigned 3rd shift Telegrapher-Clerk, Phoenix Yard Office, Phoenix, Arizona, for one special call each date March 26, April 8 and 9, 1959, and two (2) special calls each date April 7 and 22, 1959.
 - (c) J. F. Wells, 2nd shift Telegrapher-Clerk, Phoenix Yard Office, Phoenix, Arizona, for one special call each date March 26, 31, and April 25, 1959.
 - (d) H. H. Longcor, 2nd shift Telegrapher-Clerk, Mesa, Arizona, for one special call March 26, 1959.

- "(e) G. A. Gilliam, 2nd shift Wire Chief, "MC" Phoenix, Arizona, for one special call March 26, 1959.
- (f) W. M. Gorman, 1st shift Manager-Wire Chief "MC" Phoenix, Arizona, for one special call March 26, 1959, and thirty (30) minutes at the time and one-half rate for April 2, 1959.
- (g) P. C. Henderson, 2nd shift Telegrapher-Clerk, Hayden Junction, Arizona for two special calls April 2, 1959.
- (h) J. T. Wells, Phoenix Yard-Tovrea relief, for one special call April 2, 1959.
- (i) N. E. Marquis, 3rd shift Wire Chief, "MC" Phoenix, Arizona, for one special call April 7, 1959.
- (j) W. R. Guymon, Extra Telegrapher assigned 3rd shift Telegrapher-Clerk, Mesa, Arizona, for one special call April 8, 1959.
- (k) R. W. DeHart, 2nd shift Telegrapher-Clerk, Rillito, Arizona, for one special call April 8, 1959.
- (l) H. J. Winders, 2nd shift Wire Chief, "UN" Tucson, Arizona, for one special call each date April 8, 9, 22 and 24, 1959.
- (m) F. M. Cummins, 2nd shift Telegrapher-Clerk, Coolidge, Arizona, for one special call April 8, 1959.
- (n) G. Townley, 2nd PMO, "UN" Tucson, Arizona, for one special call April 9, 1959.
- (o) H. J. Edmonds, 3rd shift Wire Chief "UN" Tucson, Arizona, for one special call April 23, 1959.
- (p) M. E. Bailey, Extra Telegrapher assigned 2nd shift Telegrapher-Clerk, Chandler, Arizona for one special call April 24, 1959.
- (q) A senior idle extra telegrapher, or J. C. Mann, regularly assigned 1st shift Telegrapher-Clerk, Phoenix Yard, Phoenix, Arizona, a day's pay at the time and one-half rate, for the named Claimant, or a day's pay at the pro rata minimum Division rate for April 7, 1959.

"(r) A senior idle extra telegrapher a day's pay at the rate of the 2nd shift Telegrapher-Clerk's position Tolleson, Arizona, or K. A. West an extra telegrapher assigned to the 3rd shift Telegrapher-Clerk's position at Phoenix Yard a day's pay at the time and one-half rate for April 17, 1959.

(s) A senior idle extra telegrapher a day's pay at the pro rata rate of the Agent-Telegrapher's position at Eloy, or R. J. Terrell, 2nd shift Telegrapher-Clerk, Casa Grande a day's pay at the overtime rate of the position occupied for April 22, 1959.

"3. The Carrier shall, in addition to the foregoing, for each date subsequent to those set out in Items (a) through (s) above on which employes not covered by the parties' agreement at the station locations set forth in Item 1 of this Statement of Claim transmit or receive messages of record over the telephone in the manner herein described, and as evidenced by Claim No. 2 of this submission, compensate the Claimants as set forth in Item 2 of this Statement of Claim and/or their successors in accordance with the call, overtime and basic day rules of the agreement.

"CLAIM NO. 2

"1. The Carrier violated the terms of an agreement between the parties hereto when on April 28, 29, May 1, 5, 6, 7, 8, 12, 13, 15, 19, 20, 21 and 25, 1959, it permitted or required employes not covered by the Telegraphers' Agreement at Phoenix, Casa Grande, Tucson, Marana, Mesa and Picacho, Arizona, to transmit and/or receive messages of record over the telephone.

"2. The Carrier shall, because of the violations set out in Item 1 of this Statement of Claim, compensate the following Claimants as hereinafter set forth:

(a) K. A. West, Extra Telegrapher assigned third shift Telegrapher-Clerk position at Phoenix Yard Office, Phoenix, Arizona for one special call for each date April 28 and 29, 1959.

(b) R. E. Reed, regularly assigned third shift Telegrapher-Clerk, Casa Grande, Arizona for one special call each date April 29 and May 5, 1959, and for two (2) special calls May 20, 1959.

(c) J. F. Wells, second shift Telegrapher-Clerk, Phoenix, Arizona, one special call for each date May 1 and 7, 1959.

- "(d) N. E. Marquis, Phoenix-Tolleson Relief Manager-Wire Chief-Telegrapher-Clerk, for one special call each day May 5, 19 and 20, 1959.
- (e) P. B. Forman, 3rd shift Wire Chief "UN" Tucson, Arizona, for one special call for each day May 5, 7, 12, 13, 19 and 25, 1959.
- (f) J. T. Wells, Phoenix Yard-Tovera Relief Telegrapher-Clerk-Agent, for one special call each date May 6 and 13, 1959.
- (g) A senior idle extra telegrapher, or R. H. Colton, relief position at Rillito, eight (8) hours at the minimum Division rate for May 6, 1959.
- (h) E. D. Gannon, third Telegrapher-Clerk, "VE" Tucson, Arizona, one special call for May 7, 1959.
- (i) A. R. Judd, Relief Position, Casa Grande, one special call each day May 19 and 21, 1959.
- (j) J. H. Mayo, Relief Position, Coolidge-Casa Grande, Arizona, for one special call May 7, 1959.
- (k) G. A. Gilliam, 2nd Wire Chief "MC" Phoenix, Arizona, for one special call each date May 7, 8, 15, 1959 and four (4) special calls May 21, 1959.
- (l) H. J. Edmonds, 2nd Wire Chief "UN" Tucson, Arizona for one special call May 7, 1959.
- (m) R. J. Terrell, 2nd Telegrapher-Clerk, Casa Grande, Arizona, for one special call May 7, 1959 and two (2) special calls May 21, 1959.
- (n) G. V. Fimbres, Relief Manager-Wire Chief "UN" Tucson, Arizona, for one special call each date May 8 and 12, 1959.
- (o) W. R. Guymon, Phoenix Yard-Tempe Relief position for one special call each date May 8 and 21, 1959.
- (p) E. Little, PMO "UN" Tucson, Arizona for one special call May 12, 1959.
- (q) W. Hait, Relief Telegrapher-Clerk, Mesa, Arizona for one special call May 12, 1959.
- (r) M. J. Barringer, 3rd Telegrapher-Clerk, Phoenix Yard Office, Phoenix, Arizona, for one special call May 25, 1959.
- (s) H. L. Gaines, 2nd Telegrapher-Clerk, Picacho,

"CLAIM NO. 3

- "1. The Carrier violates the terms of an Agreement between the parties hereto at Bakersfield, California when it permits or requires employees in the Chief Train Dispatcher's office, and the Car Distributor's office, not covered by the Telegraphers' Agreement to receive over the telephone messages of record transmitted by the Agent-Telegrapher at Monolith, California.
- "2. The Carrier shall, because of the violations set out in Item 1 of this Statement of Claim compensate Jack Panick, regularly assigned 1st shift Telegrapher-PMO-Clerk, Bakersfield, for 2 special calls for each date March 24, 25, 26, 27, and 31; April 1, 2, 3, 7, 8, 9, 10, 13 and 14, 1959, and L. E. Scott, Relief Wire Chief Telegrapher, Bakersfield, one special call each date March 30 and April 6, 1959.
- "3. The Carrier shall, in addition to the foregoing, for each date subsequent to those set out above on which employees not covered by the agreement received messages of record over the telephone in the manner hereinabove described compensate the Claimants set forth in Item 2 of this Statement of Claim, and/or their successors in accordance with the call or over-time provisions of the agreement.

"CLAIM NO. 4

- "1. The Carrier violated the terms of an agreement between the parties hereto at Indio, California when on August 10, 1959 and February 1, 1960 it required or permitted Engine Crew Dispatcher, an employee not covered by the Telegraphers' Agreement, to transmit a message of record to a Telegrapher-Clerk at Niland, California.
- "2. The Carrier shall, because of the violation set forth in Item 1 of this Statement of Claim, compensate L. Rosenfeld, regularly assigned Relief Wire Chief Telegrapher-Clerk-PMO "D0" Telegraph Office, Indio, for one special call on each date.

"CLAIM NO. 5

- "*1. The Carrier violates the terms of an agreement between the parties hereto at Phoenix, Casa Grande, Tucson and Coolidge, Arizona, when on July 9, 10, August 9, 13, 19 and 22, 1959, it permitted or required employees not covered by the Telegraphers' Agreement to transmit and/or receive messages of record over the telephone.

- "2. The Carrier shall, because of the violations set out in Item 1 of this Statement of Claim compensate the following Claimants as hereinafter set forth:
- (a) G. A. Gilliam, 3rd Wire Chief "MC" Phoenix, Arizona, for one special call July 9, 1959.
 - (b) R. E. Taylor, 2nd Telegrapher-Clerk, Casa Grande, Arizona, for one special call July 9, 1959.
 - (c) P. B. Forman, 3rd Wire Chief "UN" Tucson, Arizona for one special call July 10, 1959.
 - (d) H. J. Edmonds, 2nd Wire Chief "UN" Tucson, Arizona, for one three (3) hour Sunday call August 9 and one special call August 13, 1959.
 - (e) J. F. Wells, 2nd Telegrapher-Clerk, Phoenix Yard, Phoenix, Arizona, for one special call August 13, 1959.
 - (f) F. M. Cummins, 2nd Telegrapher-Clerk, Coolidge, Arizona for one special call August 13, 1959.
 - (g) M. J. Barringer, 3rd Telegrapher-Clerk, Phoenix Yard, Phoenix, Arizona for one special call August 19, 1959.
 - (h) Extra Telegrapher H. J. Winters, assigned Phoenix Yard-Tempe Relief Position, one special call for August 22, 1959.

"*NOTE: Claim No. 5 supplements Claims 1 and 2.

"CLAIM NO. 6

- "1. The Carrier violated the terms of an agreement between the parties hereto when on January 17, 1960, it permitted or required an employee not covered by the Telegraphers' Agreement at Hazen, Nevada, to transmit messages of record over the telephone to another such employee at Ogden, Utah.
- "2. The Carrier shall, because of the violation set out in Item 1 of this Statement of Claim compensate the following claimants as hereinafter set forth:
- (a) W. R. Godwin, Agent-Telegrapher, Hazen, for one special call January 17, 1960.
 - (b) L. P. Chamberlin, 1st Telegrapher-PMO-Clerk, Ogden, Utah, for one special call for January 17, 1960."

OPINION OF BOARD:

This case includes six separate claims including some 66 different telephone conversations wherein employees other than telegraphers transmitted certain messages, reports or information to other employees of Carrier. The Organization contends that all of the messages constituted communications of record and/or dealt with operation or movement of trains and their transmission by persons other than telegraphers violated the agreement. Carrier replies that all of the calls involved merely the exchange of information between employees in the regular performance of their assigned duties in accordance with the regular practice on the property. It says they were not communications of record nor did they concern movement of trains.

In Award No. 12 we stated that communication work belongs to telegraphers if it falls within any one of three 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 employees. With reference to most of the claims in this case the Organization has produced no substantial evidence of an exclusive custom and practice on the property. In passing on the merit of the many claims and sub-claims we will, therefore, be concerned primarily with the first two criteria. At the hearing the sub-claims were numbered for identification. In many instances there is a message and a reply, hence the use of two numbers.

CLAIM NO. 1

Sub-Claim 1 and 2: The message stated that a certain waybill should have been prepaid instead of collect. The reply said a prepay would be sent. This is certainly not a communication of record nor does it deal directly with the movement of trains. It must therefore be denied. The nearest award we can find to this fact situation is 11343, which rejected a claim based on a message concerning the tracing of a waybill.

Sub-Claim 3 and 4: The message here stated that a particular trailer had no markings and no bill. The reply gave consignee's name and stated that the bill would be mailed. We do not believe this was a communication of record of directly affected the movement of trains. It is, therefore, rejected.

Sub-Claims 5 and 6: The clerk here requested the weights on a particular car (giving its number and consignee) and the reply gave the weights. This was not a communication of record. See Award 12 (Claim 1) of this Board and Award 11730 (Claims 11 and 14). The claim is without merit.

Sub-Claim 7: This call from the Signal Supervisor to the Signal Maintainer that a certain train had reported the glass broken in a particular signal. This is not a communication of record nor does it directly affect the control or movement of trains. In Award 10525 (Claims 21, 22 and 23) where the signal was reported out of order the claim was denied. See also denial Award 12609 (Claim 1) where the message was "the light is out in Signal Light Wellton, Signal Maintainer repair it." We think the present claim is without merit.

Sub-Claim 8 and 9: Grinder Operator requested permission to remove his trailer from Serape to Tempe the following day. He was told to call the shop in Tucson to see if equipment necessary was available. This is certainly not a communication of record nor does it directly concern the movement of trains. Award 10525 (Claim 8) rejected a claim based on a similar request. We reject the present claim.

Sub-Claim 10: The message for delivery to Baggage man on a certain train, concerned two corpses which were destined for Chicago. The Organization says it affected the flow of transportation. That is not enough. It must directly affect the operation of trains or be a communication of record. Here it was neither. A well reasoned opinion supporting this position is Award 5660. Another denial award on the same facts is 10525 (Claim 1a(5)). The claim is without merit.

Sub-Claim 11: The message read: "The car you asked about left Cheyenne in the afternoon of March 30 and will take about six days to get to you." This is a reply to a car tracer message and as such falls in the category of "communication of record". The reasoning of Referee Ables in Award 10767 is persuasive. We take note of the denial of a similar claim in Award 11730. cited by Carrier, but point out that no reason was assigned and we consider that decision unsound. The claim is sustained.

Sub-Claims 12 and 13: These two calls were made by an Engineer and Conductor requesting that they be relieved. These are not communications of record nor do they directly affect the movement of trains. They concern personnel assignments. Awards denying such claims are 6330 and 12620 (Claim 1). The claims are rejected.

Sub-Claim 14: This call advised the Agent that a certain train would have a corpse to unload. For the same reasons expressed above under Sub-Claim 10 the claim is denied.

Sub-Claim 15: The call here was from the Trainmaster at Phoenix to the Conductor of the East Drag instructing him to set out hog cars at Tempe to be bedded, leave the 40 foot cars at Tovrea for cattle loading, pick up 4 cars at Tovrea and load ten cars of sheep at Serape. Beyond any question this message relates to the operation and movement of trains. It is also the kind of message that would be made of record. It clearly belongs to telegraphers. The claim is sustained.

Sub-Claim 16: Inquiry by clerk as to what the Agent had found out about demurrage. This in no way relates to the movement of trains. It cannot possibly be considered a message of record. It is merely an inquiry concerning a financial obligation. The claim has no merit.

Sub-Claim 17: The message was "ATSF 13858 plaster board from Plaster City, California 4th to O'Malley Lumber Co. Casa Grande out Yuma on TXM last night be in Casa Grande today". For the reasons stated in Sub-Claim 11 we consider this to be a communication of record and sustain the claim.

Sub-Claim 18 and 19: Inquiry by Section Foreman of Roadmaster's Clerk as to whether or not certain cars should be sanded; reply to sand cars and report numbers. This is not a communication of record nor does it affect movement of trains. The claim has no merit.

Sub-Claim 20 and 21: Request by one clerk for assistance from another in collecting past due bills owed by a patron. This concerned a fiscal matter. It did not affect movement of trains. It is not the

type of communication of which a record could be made. The claim is denied.

Sub-Claim 22 and 23: Request made by Foreman of Road Gang to Clerk to have Building Department make portable toilet for his gang. Reply that it would be made. This cannot qualify as a message affecting the movement of trains. It surely is not the type of message which would be made of record. The claim is without merit.

Sub-Claim 24 and 25: In this call an engineman requested the crew dispatcher to give him a lay-off for the day and the request was granted with the statement that he would be called the next day. This merely concerned a personnel assignment and had nothing to do with train movements. It is not a communication of record. See Sub-Claims 13 and 14 and awards cited there. The claim is rejected.

Sub-Claim 26 and 27: Inquiry as to whether Agent was short on a tobacco shipment. This message concerned the Traffic Department; it had nothing to do with train movements and cannot be considered a communication of record. The claim is denied.

Sub-Claim 28 and 29: Inquiry by clerk as to why telephone bill for particular month had not been received. This concerned a fiscal matter and has nothing to do with train movements. It surely would not be made of record. The claim is lacking in merit.

Sub-Claim 30: Request to have a member of B & B Gang 11 call the B & B Office when he got off duty. On its face this message does not affect train movements, and certainly is not a communication of record. It is, therefore, rejected.

Sub-Claim 31: The message for the conductor and engineer of a particular train was: "Do not go beyond 23rd Avenue Phoenix without calling Yardmaster account yard blocked." This definitely concerned

the control and movement of trains and is the kind of communication which belongs to telegraphers. We do not consider Award 9318 cited by Carrier to be in point. The claim is sustained.

Sub-Claim 32 and 33: The Clerk at Phoenix asked the Clerk at Casa Grande to give him the time two specified (by number) cars arrived, postal notice mailed and bill of lading surrendered. The reply gave time of arrival and surrender of bill of lading but said no notice mailed because cars on industry spot. This does not relate to or control movement of trains. It was not a communication of record. It is similar to the message in Award 12612. The claim is denied.

Sub-Claim 34: This conversation was between the Cashier in Phoenix and the Agent at Coolidge and concerned a C.O.D. draft of the Carrier to a customer. It dealt with a financial matter and in no way related to train movements. It was apparently in reply to a question about the draft and was not a communication of record. The claim has no merit.

Sub-Claim 35: A report to the Signal Office by a Signal Maintainer that he had checked out a signal and found it O.K. although it had been reported bad. This claim is similar to that in Sub-Claim 7 above and is rejected for the same reasons.

Sub-Claim 36: The B & B Clerk asked the Agent to have a certain member of Gang 11 call him at Tucson. This is the same situation as in Sub-Claim 30 above and is rejected for the same reasons.

Sub-Claim 37: Conductor advised Dispatcher that Brakeman had received an injury while switching and did not feel like continuing the trip. He requested that while they were having lunch at Chandler

another brakeman be sent to replace the injured man. This did not affect the movement of trains, and was not a communication of record. It was a personnel matter. The claim is rejected.

Sub-Claim 38: The information given by the clerk in Phoenix to the Agent in Tovrea was "Santa Fe just released PRR603088 from Olin Mathieson for Ripley, Calif. via AT&SF at Phoenix." This did not directly affect the movement of trains and we do not consider it a communication of record. We are unable to distinguish the message from that in Award 12612. The claim is denied.

CLAIM NO. 2

Sub-Claim 1 and 2: This conversation between Claims Clerk and an agent related complaint from shipper concerning damage to shipment and why inspection had not been made. This did not concern movement of trains and was not a communication of record. The claim is without merit.

Sub-Claim 3 and 4: The call concerned an overdue freight bill and freight clerk asked agent why the customer had not paid it. This has nothing to do with train movements and is obviously not a communication of record. The claim is denied.

Sub-Claim 5: The Agent at Coolidge requested the Chief Clerk at Phoenix Yard to send him six box cars of a certain size and type by the next day. This did not directly relate to the movement of trains nor was it a communication of record. The Organization has failed to show that this type of message has been customarily handled exclusively by telegraphers. The claim is therefore, rejected. See Award 12705.

Sub-Claim 6 and 7: The conversation related to an error on a demurrage bill which the caller wished to correct. This concerned

a financial matter, had nothing to do with train movements and was clearly not a communication of record. The claim has no merit.

Sub-Claim 8 and 9: The call from the clerk concerned the tracing of a particular shipment and inquired whether the Agent had it at his station. We think this was a communication of record. We are unable to distinguish it from the tracing of a car and in accordance with the position taken in Sub-Claim 11 of Claim 1 we sustain the claim.

Sub-Claim 10 and 11: The Conductor asked the Trainmaster's Clerk what to do with a car of beer for Chandler and a car of lard for Tempe. The reply told him to set them out at the two places if it would not cause too much delay; otherwise to bring them to Phoenix. These were clearly instructions concerning the movement of trains and in our judgment belonged to the Telegraphers. Note Award 6693. The claim is sustained.

Sub-Claim 12 and 13: Clerk inquired of Agent about a particular car seal. Reply was that the seal was not applied at the Agent's station. We do not consider this a communication of record and it did not affect the movement of trains. The claim is denied.

Sub-Claim 14: This was a request for a certain type of cars to be spotted by a certain date for loading onions. The situation here is different from that in Award 8130 cited by the Organization where the instructions were given to the conductor. For the reasons expressed in Sub-Claim 5 and 6, above, it is rejected.

Sub-Claim 15 and 16: This is another car tracing message. It inquired about a certain car, giving origin, routing and consignee. For the reasons stated in Sub-Claim 11 of Claim 1 we hold that it was a communication of record. The claim is sustained.

Sub-Claims 17-22: The three telephone conversations involved here relate to the same transaction and were made on the same day. On the first call the Clerk at Tucson stated that a car load of wheat had burned the day before at Casa Grande and asked the Agent at Coolidge for information as to shipper and consignee. This was given by the Agent from the waybill. The second call from the Car Department at Tucson inquired if the car came to Coolidge empty from Phoenix or Tucson. The third call was from the Clerk at Phoenix to the Clerk at Casa Grande inquiring about the status of the car and whether it was ready to move. The reply was that it would be rewheeled that night and get out after midnight. We believe that these messages related to the movement of trains and/or the safety of products. They are the kind of messages that would normally be made of record. Neither of the Awards cited by Carrier (11343 and 11730 Sub-Claim 9) is the point here. The facts are entirely different. We consider these claims meritorious and they are sustained.

Sub-Claim 23 and 24: This was an inquiry as to disposition of certain grain cars which could not be used at Coolidge. The reply by the Car Distributor was to forward them to Casa Grande for loading. This did not concern train movements. It was not a communication of record. There is no showing that Telegraphers have handled this type of communication exclusively in the past. The claim is rejected.

Sub-Claim 25 and 26: The call from the Tracing Clerk at Phoenix on May 8th inquired about "4 cartons consigned Picacho School billed April 21st." stating that the shipment had not arrived, and asked if it was on hand at Coolidge. For the reasons stated above under Sub-Claim 8 and 9 we consider this a communication of record and sustain the claim.

Sub-Claim 27 and 28: The Clerk in Phoenix asked the Agent in Casa Grande "What train and time did that partially burned car of wheat move from Casa Grande on?" The reply, "Car was picked up by X6284 West APSS at 8:19 P.M." We think these were communications of record and had to do with the operation of trains. We do not consider this claim distinguishable from Award 12621. The claim is sustained.

Sub-Claim 29 and 30: The caller requested 500 car seals and the reply asked for a requisition. This is not a communication of record nor does it relate to the movement of trains. It is, therefore, without merit and is rejected.

Sub-Claim 31 and 32: The Agent here asked the Car-Distributor what to do with certain stock on hand. He was told to hold them for a day and if not used then to forward to Tucson. This was not a communication of record and did not deal with the movement of trains. We distinguish this from Sub-Claim 10 and 11 above where the instructions were issued to the Conductor. The claim is denied.

Sub-Claim 33, 34 and 35: This was a call from a fireman at Mesa requesting permission from Dispatcher at Tucson to deadhead on a certain train. It related to personnel matters and had nothing to do with train movement. It was not a message of record. The claim is without merit.

Sub-Claim 36 and 37: Inquiry by Clerk at Phoenix of Agent at Casa Grande as to why a particular car had left the latter station without being fully loaded, and on whose authority car moved. We think this was a communication of record and related to the movement of trains. The claim is sustained.

Sub-Claim 38 and 39: Engineering Department told Agent that it planned to retire a spur track and inquired what changes in operation

of the customer's business made the spur no longer useful. Reply was that Feed Company which leased it was out of business. This did not relate to the movement of trains and was not a message of record.

The claim is denied.

Sub-Claim 40: Clerk at Phoenix told Agent at Coolidge what to do with a certain car when it was empty. This was not a message of record nor did it deal with the operation of trains. Like Sub-Claim 31 and 32 above it is lacking in merit.

Sub-Claim 41: Engineer had Agent at Coolidge call the Roundhouse Foreman at Phoenix and told him to meet Train No. 1 at Phoenix with pipefitter and machine since he had engine trouble. This certainly concerns the operation and movement of trains and is the type of message belonging to Telegraphers. The claim is sustained.

Sub-Claim 42, 43 and 44: A telephone conversation between car distributor at Tucson and Agent at Casa Grande concerning the car situation at the latter station, including cars on hand and the needs of local customers. This information does not affect the operation of trains, and was not the type of message which by its nature would be made of record. Carrier's evidence shows that for many years this type of communication has been made by clerks. The facts in this Claim are like those in Claim 4 of Award 12. For the reasons expressed there and in Award 11805 the claim is denied.

Sub-Claim 45 and 46: This was conversation between Clerk at Phoenix and Clerk at Casa Grande about a past due bill of a customer. It has no connection with train movements and is not the type of message which would be recorded. See Sub-Claim 3 and 4 above. The claim has no merit.

Sub-Claim 56: A member of Communications Gang 3 called San Francisco to advise that wire removal from Tucson to Picacho would be completed that day and that the gang would move to Casa Grande the next day. This does not directly affect train movements. It is a labor report. The Organization has no case holding that this type of report is a communication of record. Awards 12613 and 12624 hold that these labor reports are not messages of record. See also Award 12118. The record shows that it has long been the practice on this property for such reports to be telephoned by the crews. See Award 12, Claim 2 of this Board. The claim is denied.

Sub-Claim 57 and 58: Inquiry about a COD draft issued by Casa Grande clerk to Culpepper Motors at Phoenix. This concerns a financial matter. It does not affect the operation of trains and is not a record communication. The claim is without merit.

Sub-Claim 59: The clerk at Casa Grande said: "Looking for car amonia consigned Casa Grande Warehouse Company. Will it be in on PXM tomorrow from Los Angeles? Have no car number on this shipment. Please advise." This is another car tracing situation. For the reasons expressed in Claim 1 (Sub-Claim 11) and in Sub-Claim 15 and 16 above we consider this a communication of record. The claim is sustained.

Sub-Claim 60: The instruction from the Chief Train Dispatcher was: "H J. clearing B0 9129 oversized ld for movement to Hayden in error. Phoenix hold this car until authority to move HJ 83". We are satisfied that this communication related to the control and movement of trains and is the kind of communication work belonging to telegraphers. The claim is sustained.

Sub-Claim 47 and 48:

Inquiry about the correctness of a demurrage bill. Reply was that it was and had been paid without protest. It does not relate to train movements and is not a message of record. See Sub-Claim 6 and 7 above and Claim 1 (Sub-Claim 16). The claim is denied.

Sub-Claim 49 and 50: Inquiry of Agent as to number of cars of onions shipped previous day and request to resend the file J report. Reply gave number of cars shipped. The conversation did not affect the movement of trains and is not a communication of record. For the same reasons we gave in Award 12, Claim 4 of this Board the claim is denied. See Sub-Claim 42, 43 and 44 above and Award 11805.

Sub-Claim 51 and 52: This call from the Clerk at Phoenix to the Agent at Eloy was for the purpose of tracing a shipment of three cartons consigned to Pinal Housing Authority at Eloy. We consider this a communication of record. See Sub-Claims 8 and 9; and 25 and 26 above. The claim is sustained.

Sub-Claim 53: The call from the Freight Agent's Office in Phoenix to Agent at Eloy requested him to advise Santa Cruz Farms of the new rates for onions. This is a matter commonly handled by the Traffic Department with clerks and agents. It does not relate to train movements and is not a record communication. The claim is denied.

Sub-Claim 54 and 55: Another inquiry about demurrage bill. This time clerk wanted to know if consignee was liable for demurrage on a car he did not know was on his spur track because it was used by Carrier for switching. This did not affect train movements and is not a message of record. See Sub-Claims 6 and 7; and 47 and 48 above. The claim is without merit.

CLAIM NO. 3

The sixteen telephone calls in this claim were made by the Agent at Monolith to the Car Distributor at Bakersfield on dates between March 24 and April 13, 1959. Each gave a car situation report including the number of empty cars on hand, number billed, number without bills, and the tonnage of east and west cars.

The Organization says that this information is furnished by the Car Distributor to the Dispatcher and he uses it to notify east and west trains to pick up cars at the particular station and to know in advance the tonnage in and out of the station. It contends that under the provisions of the Scope Rule this type of communication belongs to the Telegraphers.

The Carrier's position is that the work in question is not encompassed by the Scope Rule - that in fact the provisions of the Rule clearly indicate the contrary. It points out that the Scope Rule was amended in 1925 to include "car distributors if required to telegraph in the performance of their duties", and this terminology has been carried forward to the present date.

We are convinced that Carrier's position is correct. The Scope Rule lists "telegraphers" and "telephone operators" and then distinguishes between the two. In this context the statement that car distributors are covered only when required to use the telegraph in performance of their duties can mean but one thing, i.e., that car distributors using the telephone in the performance of their normal duties are not covered. The Record shows beyond question that car distributors have been using the telephone for these car

reports for approximately forty years or more (see especially pages 151-154 and 268, 269). In our judgment the Organization has presented no evidence or authority to support its position. We hold that the Scope Rule does not cover this type of work by car distributors and the claim is therefore, rejected. See Awards 8658 and 11805.

CLAIM NO. 4

The crew dispatcher at Indio by telephone gave the telegrapher at Niland the following message for Fireman Ingram on work train which ties up there: "You are relieved and are to return to Indio on first transportation. Will send another fireman to Niland on No. 40." The message dealt with a personnel assignment and a displacement. It did not concern the movement of trains or the safety of passengers on property. It was not a message of record. Award 12620 (Claim 1) denying a similar claim is persuasive. See also Award 6330. The Organization has no evidence that this kind of message has in the past been handled exclusively by telegraphers. The claim is rejected.

CLAIM NO. 5

Sub-Claim 1: By telephone the clerk at Phoenix gave the clerk at Casa Grande a freight rate which had been requested. This type of communication between the traffic department and the clerks is one of long standing on this property. It has nothing to do with the movement of trains and would certainly not be made of record. See Sub-Claim 53 of Claim 2 and Award 11730 (12). The claim has no merit.

Sub-Claim 2: This was a request by the Track Foreman for the clerk in the Tucson signal office to send him some certain forms and special delivery stamps. It has no relation to train movements and is not a message of record. The claim is denied.

Sub-Claim 3 and 4: The Engine Crew Dispatcher at Tucson asked the Telegrapher at Casa Grande what time the work train was to go on duty the next day and the Telegrapher told him 5:30 a.m. This information concerning the time a crew began work is substantially similar to that in Claim 4 and in Awards 12620 and 6330. It relates to work assignments, and does not directly or immediately concern the movement of trains. It cannot be considered a record communication. The claim has no merit.

Sub-Claims 5 and 6: The Clerk at Coolidge asked the Clerk in Tucson: "Do we have a cattle car on Phoenix Stock Train today? If so, when did it leave Tucson?" Reply was: "There is one car on Stock Train date for Coolidge, and he left Tucson at 1:12 p.m." We think that this conversation had to do with the operation of trains and was a communication of record, and is the type of communication which belongs to Telegraphers. Award 12621 is in point here and supports our position. Carrier seeks to distinguish that Award on the ground that the conversation there was about cars which were to move whereas here the conversation concerns a car which has already moved. We are not impressed with this argument. It is a distinction without a difference. The claim is sustained.

Sub-Claim 7 and 8: The call from the clerk at Phoenix to the clerk at Coolidge concerned bus transportation home for a man who had been bumped at Hayden. This did not concern movements of trains and was not a communication of record. The claim is denied.

Sub-Claim 9: The Agent at Coolidge telephoned the Roundhouse Foreman at Phoenix and told him that the Conductor on No. 1 advised that Car No. 105 was running hot. In our judgment this type of message concerns the operation of trains and is the type of communication which

belongs to Telegraphers. See Award 23 of Special Board 306 (Referee Whiting). The claim is sustained.

Sub-Claim 10: The Trainmaster at Phoenix called the Agent at Coolidge and gave him a message for the Conductor of the East Drag. The message asked why a certain car had been left blocking the driveway to a shipper's warehouse contrary to shipper's instructions. This was an inquiry as to why the work had not been properly performed. It did not relate to the movement of trains and was not a communication of record. The claim is denied.

CLAIM NO. 6

A conductor while at Hazen telephoned the Dispatcher at Ogden and asked if he would have time to set out there ahead of Train No. 27. The Dispatcher said yes and requested information on a car which the Conductor had set out earlier at Toy. The Conductor then gave the following information on the hot box set out: "Car SP-161318 load of ore for Stockton, California hot box L-4 South side steel wheels capacity 100,000 needs 5-1/2 X 10 press." The Dispatcher then asked the conductor for his consist out of Hazen and this was given as "18 loads, 39 empties". The Conductor then asked where he was to place the cars for Modac branch on arrival at Fernley. The Dispatcher told him to put them on the West pass at Fernley. All of these communications related to the control and movement of trains and are the type of messages which belong to Telegraphers. We have already so ruled in this case on such matters as instructions concerning setting out cars and the hot-box report. As to the consist there can be no question. Carrier's representative was at a loss to understand why the consist was requested and given, admitting that this information is handled by Telegraphers. The claim is sustained.

FINDING

The Agreement was violated to the extent indicated in the Opinion.

AWARD:

Claim No. 1: Sub-Claims 11-15, 17 and 31 are sustained.

Sub-Claims 1-2; 3-4; 5-6; 7; 8-9; 10; 12-13; 14; 16; 18-19; 20-21; 22-23; 24-25; 26-27; 28-29; 30; 32-33; 34; 35; 36; 37; 38 are denied.

Claim No. 2: Sub-Claims 8-9; 10-11; 15-16; 17-22; 25-26; 27-28; 36-37; 41; 51-52; 59; 60 are sustained.

Sub-Claims 1-2; 3-4; 5; 6-7; 12-13; 14; 23-24; 29-30; 31-32; 33-34-35; 38-39; 40; 42-43-44; 45-46; 47-48; 49-50; 53; 54-55; 56; 57-58 are denied.

Claim No. 3 is denied.

Claim No. 4 is denied.

Claim No. 5: Sub-Claims 5-6 and 9 are sustained.

Sub-Claims 1, 2, 3-4; 7-8 and 10 are denied.

Claim No. 6 is sustained.

SPECIAL BOARD OF ADJUSTMENT NO. 553


Roy R. Ray, Chairman


D. A. Bobo, Employee Member


L. W. Sloan, Carrier Member

San Francisco, California
June 28, 1965