Award No. 17

Docket No. 17

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:

1. Carrier violated and continues to violate the terms of the current Telegraphers' Agreement, when on January 21 and March 18, 1961 (and on subsequent dates as shown in the record) by requiring or permitting employes having no rights under said Agreement to perform the work of wire testing and related telegraphers' work at Montello, Nevada.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, restore said work and its performance to the Agent-Telegrapher at Montello, to whom it belongs by rule and practice. And,

3. (a) Compensate H. E. Scott, regularly assigned Agent-Telegrapher and/or his successor for one special call for each date, January 21 and March 18, 1961.

(b) Compensate H. E. Scott, and/or his successor for one special call on each date and for each instance that the violation here complained of occurs subsequent to January 21, 1961.

(c) A joint check of Carrier's records is requested to determine the proper compensation due claimant, or claimants, for violations occurring subsequent to January 21, 1961, over which a dispute may arise, as to the validity of said claims."

OPINION OF BOARD:

This claim is based on the action of Carrier on January 21, 1961, requiring a District Lineman to go to the station at Montello, Nevada during the off-duty hours of the Agent-Telegrapher and assist the Wire Chief at Ogden in testing for faults in the line and to make patches. Subsequent similar acts by Carrier form the basis of additional claims which have been included in the appeal.

The Organization contends that this work of testing and patching wires in the telegraph office has always been done by the Telegraphers as a part of their duties in connection with the operation of telegraph and telephone lines and that the work belongs to the Telegraphers under their Scope Rule. Carrier takes the position that for claimants to prevail they must show that through tradition, custom and practice on the property, they have acquired an exclusive right to this work, and it says that no such showing has been made.

The wire test board is located in the Montello station and is used for testing and patching wires on Carrier's telegraph, telephone and teletype circuits. It is operated on instructions given by the Wire Chief by telephone or telegraph. The Record shows that the testing and patching at Montello during off-duty as well as on-duty hours had always been done by Telegraphers prior to January 21, 1961. Sometime shortly before that date Carrier issued a letter of instructions to the Wire Chiefs at Ogden and Sparks stating that henceforth during the off-duty hours of the Telegraphers the District Lineman was to be called instead of the Telegrapher to assist the Wire Chief in making tests and patches at stations where no Wire Chief was employed. Superintendent

Tanner later issued an instruction that Telegraphers should not be called for this type of work because it belonged to Linemen.

Carrier admits that where Wire Chiefs are located all testing and patching belongs to them. But it argues that where Wire Chiefs are not located (e.g. at Montello where there is only an Agent-Telegrapher) the testing and patching may be done by persons other than Telegraphers. It seeks to draw a distinction between the Wire Chief who is listed in the Scope Rule and the Regular Telegrapher who is not primarily engaged in the work of testing. Carrier concedes that prior to January 21, 1961 at Montello and on the entire Salt Lake Division the testing and patching in the telegraph office was done by Telegraphers when off-duty as well as when on-duty but it says that prior to this time linemen had done this kind of work at other places on the system where Telegraphers were employed. All of Carrier's evidence as to past practice by non-telegraphers is on form letters containing a statement prepared by Carrier as to the practice with blanks for the employe to fill in places and dates. The Record indicates that these letters were withheld by Carrier during the hearing on the property and the Organization was afforded no opportunity to ascertain the names of such employes or to combat the statements. In our view this in itself makes the statements suspect.

The Organization has a mass of evidence from widely scattered points on the system which is highly persuasive as to actual practice at different places. In general the letters state that it was standard practice for this testing and patching in the Telegraph Office to be done by the Telegraphers and that the Writers never knew of it being

performed by linemen. Upon the entire record we find that there may have been scattered instances of performance of such testing and patching by linemen at some places, but that it was not standard practice for linemen to do this work. Moreover, on the Salt Lake Division there is no doubt whatever that the work was performed exclusively by Telegraphers prior to the incident giving rise to the present claim. Carrier's own instructions to its Wire Chiefs seems to bear out that Telegraphers do this testing, and patching. Rule 12 says that the Wire Chief is to "Make every possible location test and measurement that is practical before notifying Linemen". He can do this only by calling the Telegraphers and having them make the test. Presumably the Wire Chief would notify the Lineman only after the trouble had been located.

The better reasoned Awards of the Third Division clearly support the position of the Organization here. The lead Award is 3524 in which Referee Carter said:

> "The Carrier contends that testing, patching and balancing do not belong exclusively to the telegraphers. In this respect we are of the opinion that testing, patching and balancing is work belonging exclusively to telegraphers when it is incidental to and done in connection with the operation of lines, either telegraph or telephone, in performing work belonging to telegraphers under their Agreement. On the other hand, such work is not that of the telegrapher when done by Telegraph and Signal Maintainers incidental to and in connection with the maintenance of lines."

This Award was followed by the Board in 8018 where it held that the disputed work was testing and was an integral part of the testing of lines being accomplished by the Wire Chief and belonged to

telegraphers. Later in the docket involved in Award 10967 Carrier's defense was the same as in the case now before us, i.e., that the work of testing and patching did not come exclusively within the Scope Rule. The Board said that while the case was being considered on the property Carrier offered no evidence of its averment that "for many years it has been the general practice on this property for employes not covered by the Telegraphers' Agreement to assist in the testing and patching of telephone lines." Speaking for the Board, Referee Dorsey laid down the following proposition:

> "As we read Award 3524 and related Awards, cited above, there is a presumption that testing and patching comes within the Scope provision. To rebut it Carrier must prove: (1) the work was performed as an incident to a position not under the Telegraphers' Agreement; or (2) by tradition, historical practice or custom the work was not exclusively performed on the property by employes covered by the Telegraphers' Agreement. In the record Carrier has not proven either of these recognized defences."

To the same effect is the more recent Award No. 13044. We regard this proposition as sound. We believe that the work of testing and patching in the telegraph office is work incidental to and done in connection with the work normally performed by telegraphers. To us it does not make sense to use a lineman for this job. In the case at hand we find that the Carrier has not rebutted the presumption by sufficient evidence from which reasonable men could find in its favor.

For the reasons expressed we hold that the work of testing and patching wires in the telegraph office belongs to telegraphers.

FINDING

That Agreement was violated.

AWARD

The claim is sustained.

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