

Award No. 28

Docket No. 28

SPECIAL BOARD OF ADJUSTMENT NO. 553

CARRIER: TEL-152-111

COMMITTEE: J-482-1

GRAND DIV.: 762.1/5

TRANSPORTATION - COMMUNICATION EMPLOYEES UNION

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

ROY R. RAY, Referee

STATEMENT OF CLAIM:

"1. The Carrier violated the terms of the Telegraphers' Agreement, particularly Rules 1, 2, 16, 17 and 19, when on November 23, 1959, it required or permitted employees in the Chief Dispatcher's Office, Tucson, not covered by the Telegraphers' Agreement, to handle messages of record with an employee in J. P. Griffin's Office in San Francisco.

2. As a result of this violation, the Carrier shall compensate G. V. Fimbres, Relief Wire Chief, Tucson, or his successor, one special call for November 23, 1959 and subsequent dates.

3. On each date subsequent to November 23, 1959 when similar violations occur, Mr. Fimbres or his successor or other employees assigned in 'UN' Office, Tucson, who were available for call service, shall be compensated one special call for each instance."

OPINION OF BOARD: This claim deals with the 1 PM Situation Report. The Union charges that Carrier violated the Agreement on November 23, 1959 and subsequent dates when it had a clerk in the Chief Dispatcher's office in Tucson telephone this Report to a supervisor in the General Offices in San Francisco. The Report gives the condition of the yards at Yuma and Tucson, including such items as number of loads and empty cars, trains in and out and the times.

The evidence shows the following: Prior to 1942 this Report was transmitted exclusively by telegraphers by means of telegraph or teletype. In 1942 Carrier began having clerks and other non-telegraphers telephone this same report to the San Francisco office. Telegraphers continued to

send the Report by teletype. On November 17, 1959, Carrier's Transportation Department in San Francisco sent a telegram to the Tucson office directing that the teletyping of the 1 PM Situation Report be discontinued. It also said, "This report will be phoned in the future." On November 23, 1959, the Situation Report shown in the Record was telephoned by a clerk in the dispatcher's office and this practice has continued until the present time.

The Union contends that the work of transmitting this report belongs to the telegraphers and that by its action Carrier has wrongfully deprived them of it. Carrier takes the position that since this report had been telephoned by clerks for many years during the same time it was being teletyped by telegraphers that latter have failed to establish any exclusive right to the work. It emphasizes the fact that the Union did not complain for 17 years and until the work of teletyping the report was discontinued.

The communication of reports of record belongs to telegraphers and it is not necessary for them to show an exclusive practice on the property in order to be entitled to the work. Award 27 of SBA No. 553 and Awards there cited. See also Award 3902 and SBA No. 136 Award 6. We hold the "Situation Report" to be a communication of Record and that its transmission belongs to telegraphers under the proper interpretation of the Scope Rule. Carrier originally referred to these reports as a mere conversation between clerks, purely informational. However, in its brief it says that the information is sent to Carrier's transportation department where it is merged with information from all other divisions and used as a statistical resume for examination by various executives and shows the

performance or situation of Carrier's overall operation. When Carrier started having the report telephoned in 1942 it began to violate the Agreement. Although the evidence is not clear, we must assume that the telegraphers were aware that the same report which they were teletyping was also being phoned by non-telegraphers. If this is so they were unconcerned with the violation since they were still doing the same work as before. As soon as Carrier took the teletyping of the report from them in November 1959, the violation became meaningful and the present claim was filed. It is one thing for Carrier to have a duplicate report telephoned and quite another for it to take from the craft the work which belongs to it.

Since the work belonged to telegraphers they did not lose it by failing to assert their rights in 1942 or shortly thereafter. They were entitled to assert the violation in 1959. The words of Referee Dorsey in Award 12667 are applicable here: "evidence of practice cannot abrogate the rule although it may bar past violations. Either party may at any time require that the practice be stopped...." There is nothing in the record to indicate any acquiescence by the telegraphers in the Company's position that they were not entitled to the work. We hold that by taking the work from the telegraphers and having it transmitted by non-telegraphers was a violation of the Agreement.

The interest of the telegraphers is fully protected in having the work restored to them. We therefore reject any continuing claim.

AWARD

Claim sustained for one call payment for November 23, 1959. Carrier is directed to restore to telegraphers the transmission of the 1 PM Situation Report.

SPECIAL BOARD OF ADJUSTMENT NO. 553


Roy R. Ray, Chairman


D. A. Bobo, Employee Member


L. W. Sloan, Carrier Member

San Francisco, California

September 2, 1965