

AWARD NO. 21

DOCKET NO. 21
GR.DIV.: 3323

SPECIAL BOARD OF ADJUSTMENT NO. 591

THE ORDER OF RAILROAD TELEGRAPHERS

VS.

READING COMPANY

STATEMENT
OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on the Reading Company that:

1. Carrier violated the agreement between the parties when it failed to comply with the Time Limit Rule when it did not render its decision (on appeal) within sixty days on the following claims:

(A). 1. Carrier violated the Agreement between the parties on September 19, 1959, when and because it required and permitted Assistant Trainmaster F. F. Burke to handle communication of record at Belt Line Jct. in violation of Scope Rule 1 of the Telegraphers' Agreement.

2. In consequence thereof the Carrier shall be required to pay J. Goelz, R. Siminitis and N. Evans a day's pay at the minimum rate for the above mentioned violation and on all subsequent dates when, in violation of the Agreement, extra operators were not assigned to handle the communication of record in accordance with the Telegraphers' Agreement.

3. Carrier shall be required to permit joint check of records to ascertain dates when such subsequent violations occurred to determine senior idle extra telegraphers.

(B). 1. Carrier violated the Agreement between the parties when and because it requires and permits clerks, employes not covered by the Telegraphers' Agreement to handle communication of record at Phoenixville, Station.

2. In consequence thereof, the Carrier shall be required to pay G. Pollash, A. Seavers and N. Evans, senior idle "extra telegraphers, a day's pay at the minimum rate account violation of Scope Rule 1 and all subsequent dates when, in violation of the agreement, extra operators were not assigned to handle this communication of record in accordance with the Telegraphers' Agreement.

3. Carrier shall be required to permit joint check of records to ascertain dates when such violations occurred and to determine senior idle extra telegrapher.

- (C).
1. Carrier violated the Agreement between the parties on October 1 and October 2, 1959, when and because it required and permitted Chief Train Dispatcher Harry Crow to transmit messages direct to the Western Maryland operator at 'YD' Office, Hagerstown, Maryland, to be delivered to GSD-96 and AJ-12 on the above dates, the above mentioned operator on the foreign railroad not covered by the Telegraphers' Agreement, thereby violating the Scope Rule of the Telegraphers' Agreement.
 2. Carrier shall be required to pay P. Hunsicker, R. Siminitis and N. Evans a day's pay account violation of Scope Rule 1 at the minimum rate of pay on the Reading Division and on all subsequent days when, in violation of the agreement, extra telegraphers were not assigned to handle the communication of record in accordance with the Telegraphers' Agreement.
 3. Carrier shall be required to permit joint check of records to ascertain dates when such violations occurred and to determine senior idle telegraphers.

- (D).
1. Carrier violated Article 1 of the Telegraphers' Agreement when, commencing on the 25th day of September, 1959, and continuing daily thereafter it caused, required or permitted Yardmaster George Yantzer, West-End Rutherford Yard, an employee not covered by the Telegraphers' Agreement, to perform work of receiving, copying and delivering train lineups at West-End Rutherford Yard, which work is, by the agreement, solely and exclusively reserved to employees covered by the Telegraphers' Agreement.
 2. Carrier shall compensate P. Hunsicker, L. Schira and R. Siminitis a day's pay account violation of Scope Rule 1, at the minimum rate of pay on the Reading Division and on all subsequent days when, in violation of the agreement, extra operators were not assigned to copy train lineups in accordance with the Telegraphers' Agreement.
 3. Carrier shall be required to permit joint check of records to ascertain dates when such subsequent violations occurred.

- (E).
1. Carrier violated the agreement between the parties when and because it required and permitted Supervisor M. Reynolds, an employee not covered by the Telegraphers' Agreement, to transmit communication of record direct from Pottstown, Pa., on October 12, 1959.
 2. In consequence thereof, Carrier shall be required to pay M. Havertine and R. Siminitis a day's pay account violation of Scope Rule 1, at the minimum rate on the Reading Division, and all subsequent dates when, in violation of the agreement extra operators were not assigned to handle the communication of record in accordance with the Telegraphers' Agreement.
 3. Carrier shall be required to permit joint check of records to ascertain dates when such subsequent violations occurred and to determine senior idle telegraphers.
- (F).
1. Carrier violated the agreement between the parties when and because it required and permitted clerks, employees not covered by the Telegraphers' Agreement, to copy messages direct at Wilmington, Del., on October 9, 12, 13 and 16, 1959.
 2. In consequence thereof, Carrier shall be required to pay P. Hunsicker, R. Similitis, N. Evans and H. Carr a day's pay account violation of Scope Rule 1, at minimum rate on Reading Division, and on all subsequent dates when, in violation of the agreement, extra operators were not assigned to copy messages of record in accordance with Telegraphers' Agreement.
 3. Carrier shall be required to permit joint check of records to ascertain dates when such subsequent violations occurred and to determine senior idle telegraphers.
- (G).
1. Carrier violated Article 1 of the Telegraphers' Agreement when, commencing on the 4th day of October, 1959, and continuing daily thereafter, it caused, required and permitted Clerk Donald Holbert, 3rd trick West Hump Yard Office, Rutherford, Pa., an employee not covered by the Telegraphers' Agreement, to perform work of receiving, copying and delivering train lineups at West Hump, Rutherford Yard, which work is, by the agreement, solely and exclusively reserved to the employees covered by the Telegraphers' Agreement.

2. Carrier shall compensate P. Hunsicker, J. Goelz, N. Evans and H. Carr a day's pay account violation of Scope Rule 1, at the minimum rate of pay on the Reading Division, and on all subsequent days when, in violation of the agreement, extra operators were not assigned to copy train lineups in accordance with Telegraphers' Agreement.
 3. Carrier shall be required to permit joint check of records to ascertain dates when such subsequent violations occurred and to determine senior idle extra telegraphers.
- (H).
1. Carrier violated the terms of the agreement between the parties when on November 2, 3, 4, 7, 8, 9, 10, 11, 14 and 15, 1959, it suspended Mr. V. J. Springer from his regular assignment as relief towerman No. 1, work week Monday to Friday, inclusive, 7:00 A.M. to 3:00 P.M., rest days Saturday and Sunday, and required him to work as train director in place of Director Mattis.
 2. Carrier shall compensate Relief Towerman V. J. Springer in the amount of \$214.40 for the ten (10) days enumerated above at the rate of the position from which suspended in violation of Articles 22 and 7 (c) of Telegraphers' Agreement at \$2.68 per hour.
- (I).
1. Carrier violated the agreement between the parties when and because it requires and permits clerks, employes not covered by the Telegraphers' Agreement, to handle communication of record from Catassuqua, Pa., direct with 'D' Office, Reading, Pa., thereby violating Scope Rule 1 of the Telegraphers' Agreement.
 2. In consequence thereof the Carrier shall be required to pay L. Schira, E. Link and R. Siminitis a day's pay at the minimum rate for each violation stated herein and on all subsequent dates when, in violation of the agreement, extra telegraphers were not assigned to handle this communication of record in accordance with the Telegraphers' Agreement.
 3. Carrier shall be required to permit a joint check of records to ascertain the dates when such violations occurred and to determine senior idle extra telegraphers.

- (J). A day's pay for H. J. Cooper on September 14, 1959, a regular work day of his assignment, account losing this day's pay because of being used for relief work on another assignment.
- (K). 1. Carrier violated the provisions of the Telegraphers' Agreement when and because it required or permitted Conductor H. Adams, an employe holding no rights under said agreement to enter Topton Station (with key furnished by carrier) when agent is working at Mertztown, Pa., or on assigned rest days and report times of record where an employe covered by the scope of the agreement is employed.
2. Mr. Fred Eschbach, the regularly assigned agent-telegrapher at Topton, Pa., shall be compensated in accordance with Article 8 (a) of the agreement of April 1, 1946, corrected September 1, 1951, for one call for September 12, 1959, and each subsequent Saturday to be determined by check of carrier's record for work denied.
3. Carrier shall, because of the violations set forth above, pay R. Siminitis and N. Evans, senior idle extra telegraphers, a day's pay at the Topton rate, \$2.528 for September 15, 16, and 17, 1959 and all subsequent dates Conductor Adams enters Topton Station and reports communication of record when agent is at Mertztown, Pa.
4. Carrier should be required to permit joint check of records to ascertain dates when each subsequent violations occurred.
- (L). 1. Carrier violated the agreement between the parties on September 25, 1959, when and because it permitted and required Conductor C. Zimmerman, a train service employe, to handle communication of record at Sinking Spring Station while the agent was off duty.
2. In consequence thereof, the Carrier shall be required to pay P. Hunsicker, L. Schira and R. Siminitis, senior idle extra telegraphers, a day's pay account violation of Scope Rule 1 at the Sinking Spring-Denver rate of pay and all subsequent dates when, in violation of the agreement, extra operators were not assigned to handle this communication of record in accordance with the Telegraphers' Agreement.
3. Carrier shall be required to permit joint check of records to ascertain dates when such subsequent violations occurred.

- (M). 1. Carrier violated the agreement between the parties on September 26 and 27, 1959, when and because it required and permitted train service employes to handle communication of record direct with dispatcher at Camp Hill outside the hours of the agent-telegrapher, thereby violating Scope Rule 1 of the Telegraphers' Agreement.
2. In consequence thereof, the Carrier shall be required to pay a 'call' to the incumbent of the agent-telegrapher's position at Camp Hill, Pa., Mr. H. Arnold, for each individual violation listed herein (3 on September 27, 3 on September 26).
- (N). 1. Carrier violated the agreement between the parties when and because it required and permitted the clerks, employes not covered by the Telegraphers' Agreement, to copy messages direct from Royersford, Pa., on August 12, 13, 14, 15, 1959.
2. In consequence thereof, the Carrier shall be required to pay W. R. Gracely, J. Dombroskie, a day's pay account violation of Scope Rule 1, at the minimum rate on the Reading Division, and on all subsequent dates when, in violation of the agreement, extra operators were not assigned to copy messages of record in accordance with the Telegraphers' Agreement.
3. Carrier shall be required to restore the telegrapher-clerk's position to an eight-hour day as it was prior to March 15, 1958, and the incumbent of the position compensated for all losses of wages and expenses incurred.
4. Carrier shall be required to permit a joint check of the records to ascertain the dates when such subsequent violations occurred and to determine the senior idle telegraphers.
- (O). 1. Carrier violated the agreement between the parties when and because it required and permitted clerks, employes not covered by the Telegraphers' Agreement, to handle communication of record at Hershey, Pa., on October 9, 12, 13, 14 and 15, 1959.
2. In consequence thereof, the Carrier shall be required to pay P. Hunsicker, E. Link and R. Siminitis a day's pay account violation of Scope Rule 1, at the minimum rate on the Reading Division, and on all subsequent dates when, in violation of the agreement, extra operators were not assigned to handle communication of record in accordance with the Telegraphers' Agreement.

3. Carrier shall be required to restore the telegrapher-clerk's position to an eight (8) hour day as it was prior to September 19, 1958, and the incumbent of the position compensated for all losses of wages and expenses incurred.
4. Carrier shall be required to permit joint check of records to ascertain dates when such subsequent violations occurred and to determine senior idle telegraphers.

(P). 1. Carrier violated the agreement between the parties when and because it required and permitted Clerk John D. Baker, an employe not covered by the Telegraphers' Agreement, to transmit to the dispatcher communication of record at Gettysburg, Pa., on September 25, 29, 30 and October 2, 1959, and continued each day thereafter, Monday through Friday, while the agent-telegrapher was off duty and was performing his duties at Mt. Holly Springs, Pa.

2. In consequence thereof, Carrier shall be required to pay P. Hunsicker, L. Schira and R. Siminitis, senior idle extra telegraphers, a day's pay account violation of Scope Rule 1 at the Gettysburg rate of pay and on all subsequent dates when in violation of the agreement extra operators were not assigned to handle this communication of record in accordance with the Telegraphers' Agreement.

3. Carrier shall be required to permit joint check of records to ascertain dates when such subsequent violations occurred and to determine senior idle telegraphers.

(Q). 1. Carrier violated the agreement between the parties when and because it required and permitted Clerk, E. M. Stauffer, an employe not covered by the Telegraphers' Agreement, to receive and transmit communication of record at Pennsburg-East Greenville, Pa., on October 12 and 14, 1959, and continuing daily Monday through Friday while agent telegrapher was off duty and performing his duties at Boyertown, Pa.

2. In consequence thereof, Carrier shall be required to pay M. Havertine and R. Siminitis, senior idle telegraphers, a day's pay account violation of Scope Rule 1 at the Pennsburg-East Greenville-Boyertown rate of pay and all subsequent dates when, in violation of the agreement, extra operators are not assigned to handling this communication of record in accordance with the Telegraphers' Agreement.

3. Carrier shall be required to permit joint check of records to ascertain dates when such subsequent violations occurred and to determine senior idle telegraphers.

(R). 1. Carrier violated the agreement between the parties when and because it required, and permitted Clerk Sewell E. Kapp, an employe not covered by the Telegraphers' Agreement, to transmit to the dispatcher communication of record at Mt. Holly Springs, Pa., on September 29 and 30, 1959, while the agent-telegrapher was off duty and was performing his duties at Gettysburg, Pa.

2. In consequence thereof, Carrier shall be required to pay G. Pollash, A. Seavers and N. Evans, senior idle extra telegraphers, a day's pay account violation of Scope Rule 1, at the Mt. Holly Springs rate of pay, and on all subsequent dates when, in violation of the agreement, extra operators were not assigned to handle this communication of record in accordance with the Telegraphers' Agreement.

3. Carrier shall be required to permit joint check of the records to ascertain the dates when such subsequent violations occurred and to determine senior telegraphers.

(S). 1. Carrier violated the agreement between the parties hereto when on July 21, 22, 23, 24, 1959, it caused, required or permitted train service and other employes to handle train orders at 'J' Tower and Perkiomen Jct. and Emmaus Jct., without in fact discontinuing the work previously performed at Emmaus Jct. by the three towermen at that point and transferred the work of those positions and assigned the performance of the same to employes not covered by the agreement between the Reading Company and The Order of Railroad Telegraphers.

2. Carrier shall be required to compensate J. Goelz, R. Siminitis, E. Ulrich for eight hours for each and every date beginning July 21, 1959 and on all subsequent dates when, in violation of the agreement, the extra men were not called to copy train orders which were formerly copied by towermen prior to February 12, 1958, at which time the I.C.C. permitted the Reading Company to close Emmaus Jct.

3. This work formerly performed by the three towermen at Emmaus Jct., Pa., shall be restored to the Telegraphers' Agreement performed only by employes coming within the scope of the Telegraphers' Agreement.

4. Carrier shall be required to compensate Paul Yordy at Perkiomen Jct. an amount equal to one call, under the agreement, for each and every date as set forth above and all subsequent dates when, in violation of the agreement, he was deprived of the work to which he was entitled in handling such train orders.
5. Further, carrier should be required to permit joint check of records to ascertain dates when such subsequent violations occurred.

(T). George Pollash was suspended from his assignment on September 24, 1st trick 'R' Tower and required to work 2nd trick 'RU', Rutherford, on September 23, 24, 25, 26, 27, 30 and October 1, 2, 1959, in violation of the Telegraphers' Agreement, Articles 19 and 7 (c) and 8 (a).

Because of this suspension in violation of Article 7 (c), herewith enter claim in favor of Mr. Pollash for eight hours account being suspended from his regular assignment of rate of position scheduled to work September 24, 25, 26, 27, 28 and October 1, 2, 3, 4, 1959, or nine days at \$2.668 per hour, \$192.10 total amount, under Article 7 (c).

Also because of this suspension herewith enter claim in favor of Mr. Pollash as in Article 8 (a) for September 23, 24, 25, 26, 27, 30 and October 1 and 2, 1959, at time and one-half for service performed on these dates. He was compensated at the time and one-half rate for September 27 and compensated at straight time rate on 23, 24, 25, 26, 30, October 1 and 2, and, therefore, 4 hours is due at pro rata rate of \$2.668 per hour, 7 days 28 hours \$74.70, total amount under Article 8 (a).

2. Carrier shall be required to allow the claims listed above as presented."

FINDINGS: It is conceded that Claims (A) and (B) are barred by the provisions of Section 1 (c) of Article V of the August 21, 1954 Agreement.

Claims (C) through (G) were appealed to the General Manager of the Carrier on February 4, 1960 and his decision was required to be given within 60 days, or by April 4, 1960. The decisions were dated April 4, 1960, but the Employees exhibit an envelope in which received which is postmarked April 7, 1960. The Carrier asserts that the letters of decision were signed and mailed in the normal course of business on April 4, 1960, but does not present any statement by anyone who mailed them.

To establish compliance with the time limit rule notice requirement, in the event the decision is sent through the mail, it is at least necessary to show affirmatively that the notice was deposited in the U.S. mail with postage prepaid within the time limited. Since there is no such evidence in this case, these claims must be sustained to the extent provided in the time limit rule.

Claims (H) through (T) were appealed to the General Manager of the Carrier on various dates from October 1, 1959 to February 4, 1960. No written notice of denial was given by him. The Carrier asserts that there was an oral agreement and understanding between the General Chairman and the General Manager's representative extending the time limits of the claims for the duration of discussions in connection therewith. The Employees deny that there was any such agreement or understanding and assert that extensions of time limits have always been handled in writing and from one fixed date to another fixed date.

The party relying upon an alleged oral agreement, to waive the time limits provided by the August 21, 1954 Agreement, has the burden to prove it and, under the circumstances set forth in these submissions, the Carrier has not met that burden. Accordingly these claims must be sustained to the extent provided in the time limit rule.

AWARD: Claims (A) and (B) are dismissed.

Claims (C) through (T) are sustained to the extent provided in Article V of the August 21, 1954 Agreement.

SPECIAL BOARD OF ADJUSTMENT NO. 591

/s/ Dudley E. Whiting

DUDLEY E. WHITING, CHAIRMAN

/s/ John T. Finnegan

JOHN T. FINNEGAN
Organization Member

/s/ V. W. Bigelow

V. W. BIGELOW
Carrier Member

PHILADELPHIA, PA.,

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