Award No. 943
Docket No. TE-922

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND AND PACIFIC

THE CHICAGO, ROCK ISLAND AND GULF RYS.

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Chicago, Rock Island and Pacific Railway that, the work of blocking trains by means of the telephone is work covered by Telegraphers' Agreement and shall be performed by employes under said agreement; and that the carrier violated the agreement on October 25, 1937, by assigning an employe not under Telegraphers' Agreement to block trains over a bridge in the Rock Island-Davenport Terminal for a period of nine hours; and the further claim that Telegrapher C. E. Norris, extra employe covered by the agreement on the Division, who was available for work on October 25, 1937, but not called or used to perform this work, shall be paid one day's pay of eight hours and one hour overtime of which he was thus deprived by the Carrier's violation of Telegraphers' Agreement."

EMPLOYES' STATEMENT OF FACTS: "Periodically for the past twenty or more years the Chicago, Rock Island and Pacific Railway Company, with which The Order of Railroad Telegraphers have an agreement running through the years since 1903, being revised at intervals during these years, the last revision consummated January 1, 1928, covering wages and working conditions, copies of which have been furnished the Board, have found it necessary due to repairs to street viaducts in Davenport, Iowa, the Mississippi River bridge of one track of a double track system from Rock Island, Illinois, across the river and through a business section of Davenport, Iowa, to create block stations through the affected zone and by the use of the telephone block trains and in connection therewith handle one switch which is used to pass trains from double to single track at the entering end of the blocking zone and back to double track operation at the exit end of such zone. The blocking telephone circuit is connected at one end with the train dispatcher's office and at the other end with a telegraph office and the block operators communicate with these offices at will. However, no blocking is done by the train dispatchers who furnished probable arriving time of West bound trains on request of blocking operators, but the telegrapher in the other office works with the blocking operators by furnishing probable arriving time of trains from the West and blocks with the blocking operators when necessary, as the telegrapher is located at a point in Davenport, Iowa, where two main lines converge one going west through Des Moines, Omaha and Lincoln to Denver and the other one westward to Kansas City, Dallas, Texas and to El Paso and Los Angeles, all trains to Chicago having to pass this office it is essential to successful blocking oper-

"The committee believing we have presented a case which can, without leaning over backward, be decided in our favor, prays that the Board will sustain our contention and order the Carrier to pay the claim and assign work of this character to those whose agreement covers the blocking of trains either by telegraph or telephone."

POSITION OF CARRIER: "The general question involved here has been up periodically for the last four or five years, and since operations similar to the particular moves in this instant case about which the telegraphers are now complaining, have been made for many years by the use of switchmen, the switchmen's organization is contending that, by virtue of having performed the work for all these years, it is evident (and they so contend) the work belongs to them and have refused to concur in any agreement or arrangement that would turn this work over to the telegraphers.

"When this matter was up in 1934 the then General Chairman of the telegraphers, Mr. V. O. Gardner, addressed our Superintendent, Mr. C. L. Ruppert, at Rock Island, under date of July 23, 1934, advising that he had discussed this particular question with the Vice Chairman of the switchmen's organization and that they expected to give it further consideration within a short time with a view to arriving at a mutual understanding, and Mr. Gardner closed his letter with this remark:

> 'Whether we agree or fail to agree, in either event, I will advise you promptly.'

No advice was ever received from Mr. Gardner or his successor, Mr. O'Kelly, or from the present General Chairman, Mr. Dunnam, until August 17, 1936, when the question was again brought up by Mr. Dunnam, but no advice was given as to what success the telegraphers had in connection with negotiations with the switchmen's organization. However, in August, 1938, a meeting was held in office of Mr. F. H. Frey, Assistant to Chief Operating Officer, at which General Chairman of the telegraphers and General Chairman of the switchmen were present, but nothing definite was decided upon.

"We feel this is a jurisdictional question and one which the two organizations involved should settle between themselves and submit to the management for consideration any proposals to which they have jointly agreed. Until such an agreement is reached the management will continue to give the work to the switchmen.

"It is the contention of the switchmen that the fact switchmen have always been used to perform the same or similar service as was performed on this and other occasions, definitely establishes the right of switchmen to continue to perform this service, and in this connection the attention of your Board is called to Awards 2736, 2861, 3192 and 3193 of the First Division of the Adjustment Board.

"If we had used other than a switchman in this case we would be confronted with a claim from the switchmen's organization on the basis of their contention that they have always rightfully performed such work.

"In this connection, it might be interesting to the Board to know that we have been informed Mr. Norris was working in some outside industry on October 25, 1937, the date for which claim has been presented in his behalf. He held no seniority as a telegrapher on the Rock Island Division as of October 25, 1937. He had been furloughed May 5, 1933, in force reduction from the old Missouri Division and accepted assignment, and for the first time created seniority as a telegrapher on the Rock Island Division on October 16, 1938."

OPINION OF BOARD: On October 25, 1937, while the westward main track was out of service at Davenport, Iowa, it was necessary to single track the line between crossover at Block Coal Company and crossover at

West Davenport. A switchman was used to handle the crossover at Block Coal Company, and to aid in handling the movement of trains at this point it was necessary to provide a telephone over which information could be given and received by the switchman and telegraph operators located at Silvis yard, West Davenport, and Missouri Division junctions. The switchman was also required to operate switches in the handling of trains at the crossover.

Petitioner contends that the work in question is covered by the Telegraphers' agreement and that the action of carrier in assigning a switchman to perform the service constituted a violation of said agreement. Carrier contends that the assignment in question did not constitute a violation of the Telegraphers' agreement and that this is a jurisdictional dispute not cognizable by this Board.

This same question arose in 1933 and was submitted to Telegraphers' Adjustment Board—Rock Island Lines, and that Board found that the work belonged to the telegraphers and had always been so handled except at the bridge across the Mississippi River between Rock Island, Ill., and Davenport, Iowa. We think this opinion is not only correct in principle but is also binding upon this Board (See Award No. 897). The fact that the work in question was located in the yard limits of Davenport, Iowa, and not on the bridge is unimportant.

The claim is in behalf of C. E. Norris, telegrapher, who had lost his seniority rights by reason of not having been regularly employed as a telegrapher for a number of years. Carrier contends this bars his right to recover.

The record shows that Norris was being used to fill vacancies as an emergency telegrapher when no extra men were available, and that as such he had performed service at West Davenport on October 24, 1937. The record further shows that no other extra men were available to protect the service in question. Under these circumstances Norris should have been called as he was on the preceding day.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the facts of record show a violation of the Telegraphers' Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of September, 1939.