

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTA AND WEST POINT RAILROAD

THE WESTERN RAILWAY OF ALABAMA

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atlanta and West Point Railroad-The Western Railway of Alabama—

"(a) That the work of the performance of the duties and responsibilities of Block-Operator, Telephone Operator-Leverman and/or Leverman required to be performed at Oakland Junction, Ga., since April 17, 1933, is work covered by Telegraphers' agreement and shall be performed by employees under said agreement.

"(b) That the act of the carrier in requiring or permitting employees not under Telegraphers' agreement to continuously perform such work at Oakland Junction since April 17, 1933, is in violation of said agreement.

"(c) That extra employees under Telegraphers' agreement who have been available to perform such work at Oakland Junction since April 17, 1933, during the hours of the day and night such work was performed by employees not under said agreement, shall be compensated for this work of which they have been improperly deprived thereby since that date.

"(d) And that if the carrier elects to continue the performance of such work at Oakland Junction the necessary number of positions under proper classification required to meet the needs of the service shall be established and filled under the governing rules of Telegraphers' agreement."

JOINT STATEMENT OF FACTS: "(1) In the Atlanta Terminal District, commencing at Atlanta Terminal Station (M. P. 0) and extending through Oakland Junction (M. P. 2.35) to East Point (M. P. 5.64), total 5.64 miles, the Atlanta and West Point Railroad and the Central of Georgia Railway own parallel single main line tracks which for many years have been pooled and operated by Central of Georgia Railway as double main tracks for joint use by both railroads.

"(2) At Oakland Junction (M. P. 2.35) this joint double track is intersected by a double tracked Belt Line owned by the Atlanta and West Point Railroad and used by it to pass its freight trains from the joint tracks to its freight train yard and terminal.

"(3) The jointly used tracks are operated by Central of Georgia Railway, and for many years prior to April 17, 1933 passage of trains from the Atlanta and West Point Belt Line to the joint tracks, and from the joint

"It is further shown by the carrier (A. & W. P.) that its employes (telegraphers) have never claimed or been granted any rights to service on this Central of Georgia track and that they do not have nor have they ever had such rights.

"It is further shown by the Carrier (A. & W. P.) that the functions required of A. & W. P. train service employes by Central of Georgia Railway and being performed by A. & W. P. train service employes by direction of Central of Georgia Railway in connection with movement over this C. of Ga. track, are not functions, the performance of which constitutes an infringement upon the rights and/or prerogatives of telegraphers, neither as telegraphers of the Central of Georgia Railway, who have always had the exclusive right to service belonging to telegraphers at stations or interlocking towers on this the Central of Georgia track, or to telegraphers of the Atlanta and West Point Railroad, who have never had right to service and have never performed service at stations or towers on said Central of Georgia tracks.

"In view of all of the above, it is further shown by this carrier (A. & W. P.) that the claim here in discussion constitutes an undertaking on part of, or in behalf of telegraphers employed by Atlanta and West Point Railroad to establish a right to perform service on another railroad (C. of Ga.); i. e.; an undertaking by A. & W. P. telegraphers to usurp the rights of telegraphers on another railroad. Obviously, such an undertaking is impossible of accomplishment.

IN CONCLUSION: And first pointing out that:

"(a) The operation here involved is a Central of Georgia Railway operation, and one over which neither the Atlanta and West Point Railroad nor its employes have jurisdiction or control, and—

"(b) That the method of operation, made basis for this claim, was established in April, 1933 and remained continuously in effect for more than four (4) years without protest or exception, thus establishing at least tacit acknowledgment and acceptance thereof by the Atlanta and West Point Railroad telegraphers as being not an infringement of their agreement.

this carrier (A. & W. P.) contends that the case presented in behalf of Atlanta and West Point telegraphers is based upon unsound principle, lacks foundation and is untenable, and the Atlanta and West Point Railroad can not be required to concede the rights and payments claimed.

"In stating this, its position, the carrier sets out that all statements as to position and contentions of the employes, as outlined herein, are based upon statements of the employes as presented in their letter of August 24, 1937; as set forth in employes statement of claim shown in this submission; and according to carrier's best recollection as set out in oral presentations made by employes' representatives in conference regarding this claim, and, having had no opportunity to review the statement of position to be set forth by employes in this joint submission, the carrier reserves the right to answer any further or other matters advanced by the employes, either in statement of their position as it is set forth in this joint submission, or otherwise advanced by employes in relation to the issues in this case, whether written, or oral."

OPINION OF THE BOARD: The claim and the positions and contentions of the employes and the carrier sufficiently appear hereinabove.

For many years the Atlanta and West Point Railroad and the Central of Georgia Railway each has owned a single railroad track running from the terminal at Atlanta, Georgia. Under contracts these tracks were used jointly by the two roads as a double track railway with the Central of Georgia in control of operation.

At Oakland Junction (2.35 miles from Atlanta terminal) the jointly-used tracks are intersected by a double track belt line owned by the Atlanta and West Point Railroad and used for the passage of its freight trains from the Atlanta and West Point belt line to the joint tracks and to pass its freight trains from the jointly-used tracks to its freight yard and terminal.

For a number of years prior to April 17, 1933, passage of the freight trains and engines and cars from the Atlanta and West Point Railroad belt line to the jointly-used tracks and from the jointly used main tracks to the belt line tracks was controlled from a tower at Oakland Junction which had been operated by the Central of Georgia Railway.

Effective April 17, 1933, the three operator-levermen positions at Oakland Junction were abolished, and thereafter some of the work and service, formerly done by the men at the tower was done by the trainmen and yardmen of the Atlanta and West Point Railroad.

After the tower was abandoned, a cement booth containing a telephone and certain lights and push buttons was set up near the intersections. A trainman, usually a conductor, would take the telephone, and ask the train dispatcher at Atlanta terminal to ring the operator at East Point. The operator at East Point controlled the train movements. A telephone conversation between him and the trainman would determine whether the jointly-used tracks were clear so that an Atlanta and West Point freight train could enter or leave them. The East Point operator would also release or unlock the hand switch, which was electrically locked, and then a trainman would throw the switch.

The carrier contended that the Board has no jurisdiction to hear the claim or make an award; that no claim or complaint was made until August 24, 1937; that a claim which was first presented over three years after the amended law became effective cannot be said to have been pending and unadjudicated when the law took effect on June 21, 1934.

Whatever may have been the intention of the Congress, a very large number of awards have been made in favor of belated claims on the theory that the Board had jurisdiction where the alleged grievances or violations occurred before June 21, 1934, but claims were not made until long after that date, because they were continuing violations. However, it has been held that compensation for time lost should not be ordered for time previous to thirty days prior to the filing of the claim, that is, thirty days prior to the date on which the claim actually was presented.

Precedent must govern; logic, yield to the weight of accumulated awards.

As to the merits of the claim, it appears that the Atlanta and West Point Railroad train service and yard men, since April 17, 1933, have been doing some of the work formerly done by the telegraphers of the Central of Georgia at Oakland Junction in connection with the operation of signals and switches for getting Atlanta and West Point Railroad freight trains off from and on to the jointly-used main tracks of the Central of Georgia Railroad Company in cooperation with the Central of Georgia tower man at East Point, over four miles distant.

The employes contend that it was a substantial portion of the work formerly done by the tower men at Oakland Junction and that it is the character, rather than the amount, of the work done which is controlling.

The carrier says that the amount of work done by the train service and yard men was negligible.

This is not a case where the train service men did nothing but push a button or turn a switch to complete a circuit and invoke electric power which automatically flashed the signals and threw the switches. Here the

men performed certain manual and lingual service in cooperation with the Central of Georgia tower man at East Point to effect necessary changes in signals and switches.

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 Employees involved in this dispute are respectively Carrier and Employees 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 train service and yardmen of the Atlanta and West Point Railroad Company performed certain service formerly performed by the telegraphers in the tower at Oakland Junction which was abandoned on April 17, 1933. The claim will be sustained in accordance with this opinion and upon the understanding that men coming within the telegraphers' agreement with the Atlanta and West Point Railroad will be employed as may be necessary and that compensation will not be allowed or paid to any one for any time prior to the 24th day of July, 1937.

AWARD

Claim sustained as set forth in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of November, 1939.

DISSENT TO AWARD NO. 993—DOCKET NO. TE-912

By comparison with the Joint Statement of Facts and the descriptions of operations in the Positions of the respective parties quoted in this award, which statements of facts were not in dispute, it will be found that the Opinion of the Board rendered by the Referee in this case in its recital of the facts included in the first six paragraphs of the Opinion diverges from the undisputed facts to the extent of confusing that which had otherwise been clear in the record, and concluded in the sixth paragraph with a description of the procedures in respect to A. & W. P. trains leaving the joint track which is in plain contradiction of the description of actual procedures jointly attested to by the parties. It is not surprising therefore to find in the fifth paragraph of the Opinion a conclusion stated as a fact that "... thereafter some of the work and service formerly done by the men at the tower was done by the trainmen and yardmen of the Atlanta and West Point Railroad." That conclusion essentially must derive from the record. It presumes an accurate understanding thereof which is not in evidence, as the contradictory recital of the facts in which it was included plainly shows. Becoming an element in determination of the issue involved in this dispute it may only in reason be concluded that the misconception of the facts carried also to similar confusion in respect to the issues involved.

The issue raised by the carrier at the very threshold of the case, viz: that if a telegrapher or operator-leverman position should exist at Oakland Junction, it would have to be filled by employees of the Central of Georgia Railway, is disregarded.

(a) The jointly used tracks consist of two parallel single main lines, owned respectively by the Central of Georgia and the A. & W. P. Railways. By agreement of 1895, still remaining in full force and effect, these tracks were pooled for use as double track, jointly by both carriers, between Atlanta Terminal Station and East Point, Ga., under the exclusive control and management of the Central of Georgia Railway. All work in connection with the maintenance and operation of the jointly used tracks had been performed continuously by Central of Georgia Railway employees, except that A. & W. P. trains operating over the joint track are manned by A. & W. P. train service employees and operate under the direction of the Central of Georgia Railway.

(b) At Oakland Junction the Central of Georgia constructed, maintained, and manned a telegraph office and interlocking tower in which three operator-levermen were employed. The signals, derails, and switches controlling movements between the A. & W. P. Belt Line and the joint track were mechanically operated through the manipulation of seventeen levers in the tower. One of the signals, so manipulated by levers was the two-arm signal near which is now located the portable telephone booth (see the Central of Georgia Bulletin). The top arm only remains on this signal. By pushing a button in the telephone booth this remaining signal arm, actuated through the automatic signal circuit, then functions in conjunction with other joint track signals.

(c) In April 1933 the Oakland Junction tower was dismantled of its equipment and closed by the Central of Georgia. Signals controlling the intersection of the Belt Line with the joint track were re-arranged and made automatic. A spring switch was installed in lieu of the former lever-manipulated switch, through which the westbound movement from the Belt Line is handled. A hand-thrown electrically-locked switch was installed to accommodate the eastbound movement to the Belt Line, in lieu of the former lever-manipulated switch. The carrier states, and it is not denied by the employees, that the installation was made by the Central of Georgia Railway "in locale under jurisdiction and control of and operated by that other railroad."

(d) It is further shown that the agreement between the respondent A. & W. P. Railroad and its telegraph employees, first entered into in 1919, never did and does not now cover operator-levermen at Oakland Junction. Such positions existed on the Central of Georgia Railway when the initial A. & W. P. agreement became effective in 1919, and continued to exist on the effective date of each subsequent agreement, including the one currently effective. The employees concede "the control of operation of the Oakland Junction tower by the Central of Georgia Railroad, prior to April 17, 1933," the date on which the operator-leverman positions were abolished. They also concede in the following language that the agreement between the Central of Georgia Railway and its telegraph employees did cover the operator-leverman positions at Oakland Junction:

"* * * 3 operator-levermen (continuous service) performing joint service for the Atlanta & West Point and Central of Georgia and included in the Telegraphers' agreement with the Central of Georgia."

From the above facts it will be clear:

(a) That the abolishment of the three Central of Georgia Railway positions of operator-leverman at Oakland Junction tower did not reduce the number of positions under the agreement between the respondent carrier and its telegraph service employees.

(b) Consequently, A. & W. P. Railway train service employees could not be performing work formerly performed by employees in the telegraph service of the respondent carrier, and

(c) If services of the character formerly performed by Central of Georgia Railway operator-levermen were now required at Oakland Junction, no lawful claim could be laid to it by the telegraph service employees of the respondent.

The last finding of the Award does make the arbitrary pronouncement that the claim is sustained upon the understanding that men coming within the agreement between the respondent and its telegraph service employees will be employed as may be necessary, but we are not told by what logical process of reasoning the Referee disregarded the foregoing controlling facts and reached this conclusion; indeed, there is none.

We have hereinbefore referred to that portion of the Opinion which states (Paragraph 5) that, after the abolition of the operator-leverman jobs in the Oakland Junction tower, "some of the work and service" formerly performed by men in the tower was thereafter performed by trainmen and yardmen. The employees state that upon the abolition of the tower there was an installation of "devices controlling the movements of trains and yard engines by interlocked switches and/or signals operated from a central point."

That the above-quoted statement of the petitioner, with respect to control from a central point, is not correct is amply set forth in the record. The bulletin issued by the Central of Georgia, describing the procedure for entry to and exit from the joint double track, clearly refutes it.

On the westbound movement (entering the joint double track) the trainman enters the telephone booth, located near the signal formerly controlled by lever from the tower, takes down the telephone receiver, and asks the A. & W. P. dispatcher to ring the East Point operator, an employee of the Central of Georgia, at the end of the joint double track. Upon response of the East Point operator, the following conversation, typical of 44 instances cited by the petitioner in the record, is held:

Conductor: Leathers, the 1305 crossing out to the main line, got a green light on.

Operator: OK, push the button, get a board and come on.

Upon receiving this permission, the trainman then pushes the button and the signal adjacent to the telephone booth then functions in conjunction with the other joint track automatic signals. Thus securing a clear signal the train proceeds into the westbound joint main track through a spring switch located therein.

For the eastbound movement, to leave the eastbound joint main track and pass to the A. & W. P. Belt Line, the trainman pushes a button in a box, near a hand throw switch. He then unlocks a padlock on the electric lock of this switch and throws the handle of the electric lock. He next unlocks the padlock on the switch stand and throws the switch (see Central of Georgia bulletin). When his train has passed over the switch he restores it to its former position, locking it, returning the handle of the electric lock to its original position, and locks it. It is clear, therefore, that the present installation is not of "devices controlling the movements * * * by interlocked switches and/or signals operated from a central point."

It is apparent that the Opinion is in error in stating that "some of the work and service, formerly done by the men at the tower, was done by the trainmen and yardmen." The controlling signal for the westbound movement was formerly operated by lever from the tower. It is now electrically activated as are the other automatic signals on the joint double track. The switch, used for the westbound movement, was formerly oper-

ated by lever from the Central of Georgia tower; no manipulation of this switch is now required as it is now a spring switch. On the eastbound movement, the switch, which was formerly operated by lever from the tower, is now operated as any other hand throw switch; the signals, which were formerly operated by lever from the tower, are now automatically activated, just as they are at other points in automatic signal territory.

The Opinion errs in the statement that a telephone conversation is necessary between the trainmen and the East Point, Central of Georgia operator, for movements both east and westbound. There is no telephone conversation held, or necessary, for the eastbound movement, and the record in this case does not support a statement to the contrary. Also, as pointed out, the East Point operator does not release or unlock the hand throw switch for the eastbound movement.

The Opinion also errs in attributing to the Carrier the statement "that the amount of work done by the train service and yard men was negligible." The Carrier does not say that it was negligible, but argues altogether it is not of the character formerly performed by the operator-levermen in the Central of Georgia tower. A clear understanding of the record and of just what work is performed clearly indicates that none of the work formerly done by the operator-levermen in the Central of Georgia Railway tower is now performed by A. & W. P. Railway train service and yard men and that such work as the latter do perform is not of a character formerly performed by the telegraph service employes in that tower.

The resultant finding which holds that telegraphers coming under the Atlanta and West Point agreement shall be employed to perform certain service formerly performed in the tower at Oakland Junction (which work without dispute had always been performed only by Central of Georgia telegraphers), basing as it evidently does upon the statements and conclusions in the Opinion which precedes, which are condemned as inaccurate by simple reference to the preceding undisputed quoted portions of the record, cannot of itself be other than inaccurate. The award sustaining the claim resting upon that unsound basis may only logically be considered to be without justification.

/s/ A. H. JONES
/s/ R. F. RAY
/s/ C. P. DUGAN
/s/ R. H. ALLISON
/s/ C. C. COOK