

Award No. 1008

Docket No. TE-928

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—EASTERN LINES

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Atchison, Topeka and Santa Fe Railway that, the work of operating signals at Ponca City, Oklahoma, controlling the movement of trains, engines and cars at the intersection of the Chicago, Rock Island and Pacific Railway with the Atchison, Topeka and Santa Fe Railway is work definitely covered by telegraphers' schedule agreement; that the act of the carrier (A. T. & S. F.) effective January 6, 1938, and continuously thereafter, in arranging for and permitting railroad employes or persons other than those covered by telegraphers' schedule agreement to operate said signals is in violation of said agreement; that positions covered by said agreement shall be immediately established to perform this work, and the positions bulletined and filled in accordance with the governing rules of said agreement; and that extra employes under telegraphers' schedule agreement available to perform this work from January 6, 1938, until employes under said agreement are regularly assigned shall be paid the wages of the positions they would have earned had they been assigned on the positions as should have been done."

EMPLOYES' STATEMENT OF FACTS: "Prior to May 21, 1932 at Ponca City, Oklahoma, there was in existence three towermen positions coming under the scope of the Telegraphers' Schedule and represented by The Order of Railroad Telegraphers. Effective May 21, 1932 the towermen were taken off and thereafter the interlocking facilities were operated by trainmen. These interlocking facilities govern the cross-over, switching etc., the Atchison, Topeka and Santa Fe Railway Company and the Chicago Rock Island and Pacific Railway Company, the former being the senior line.

"The National Railroad Adjustment Board, Third Division issued Award 553 December 21, 1937 in connection with a claim filed therewith and designated as Docket TE-538. The Order of Railroad Telegraphers filed with the National Railroad Adjustment Board, Third Division on May 11, 1938, a request for an interpretation of Award 553; such interpretation was issued July 1, 1938.

"Effective January 6, 1938 a switch-key circuit control system of operation located outside the tower or building was substituted for the interlocking lever system located within the tower or building. Persons other than those covered by the Telegraphers' Schedule are required to operate the switch-key circuit control system which governs crossovers, switching, etc., as was the case when the interlocking lever system facilities were in use.

and every railroad in the country of which we have knowledge has, where and when necessary, had trainmen to manipulate levers. Further, there are no levers involved in this case. Never on this railroad, nor on any other we are sure, has any management been guilty of the extravagant absurdity, of hiring full-time employes occasionally to push a button or turn a key. Never before the present or any prior Board have any employes been foolish or unreasonable enough to advance such a claim. From the foregoing, it is very plain that the schedule does not make even Santa Fe key-turning a telegraphers' monopoly.

CONCLUSION

"We are aware that some decisions have ignored decisions of the Railway Boards of Adjustment and United States Railroad Labor Board. The tendency in some case at least is properly to overrule such decisions, and restore the meaning of words, the intent of which has thus been violated. See Awards 615, 644. We are not interested in the facts of other cases, or particular decisions, whether they achieve justice or injustice. We are concerned with the particular facts, and the rules controlling this case and their history. Considering only these relevant things, it is clear that the Board's only jurisdiction, and its clear duty, is to deny this claim."

OPINION OF BOARD: This is a renewed claim or rather a claim formerly presented on a different state of facts. There was a claim known as Docket TE-538, resulting in Award Number 553. This award was rendered December 21, 1937. On September 21, 1937, exactly three months before the award, the carrier determined upon and took steps to install at that place an automatic signal system and this was completed and superseded the previous system on January 6, 1938.

In the year 1927, at Ponca City, Oklahoma, the Chicago, Rock Island and Pacific Railway Company constructed a single-line track across two main-line tracks and one siding of the Atchison, Topeka and Santa Fe Railway Company and also constructed an interlocking tower in which three towermen were employed. These three men were on the payroll of the Santa Fe, the Rock Island paying a proportionate share of their salaries to the Santa Fe. From September 15, 1927, to May 21, 1932, derails and signals were normally set against all train movements across this intersection on both roads and the towermen would move levers controlling derails and signals to permit the movement of trains across the tracks. After May 21, 1932 all derails were removed from the Santa Fe tracks, though signals were left and derails and signals remained on the Rock Island track. At the time of Award Number 553, the signals were operated by Rock Island trainmen from the same tower where the three towermen positions had been abolished.

Effective January 6, 1938, the signaling was done automatically. It is true that trainmen would unlock an electric switch and complete the circuit which enabled electric power to give the signals. Occurring four to six or perhaps ten times in twenty-four hours, these very few minute periods occupied altogether a total of less than forty-five minutes.

"It was ascertained that it was practicable to reduce the operation to the simple turning of a key once on each crossing movement, the balance of the protection being completely automatic."

That there was a complete change in January, 1938, is conceded by the employes in their submission as shown on page 33 of the docket as follows:

"The carrier on pages 14 and 15 of the submission treats on Award 553, and makes the observation that the employes' position in that case precludes its recovery here. This is admitted. The Organization's reason for now being here is account of changed conditions which the carrier made effective subsequent to Award 553, and

which apparently was done to avoid its application. 'Levers' were stressed by the organization in the previous case solely because that was the method employed at Ponca City under which the previous dispute arose; however, levers are not the only method of operating signals over which the 'Telegraphers' Agreement grants to the organization the sole right to manipulate by employes under the agreement."

At the hearing it was suggested that the employes would not insist on three telegrapher towermen but that one might be sufficient.

Every automatic operation requires human thought and action to release it. The trainman or yardman who unlocked the switch to invoke the power for the automatic operation of the signals and switches at the crossing at Ponca City when the Rock Island engines and cars were to cross the Santa Fe tracks was, in fact, no more a "towerman" or "leverman" than the engineer would have been had the power been invoked by the engineer when he opened the throttle or he pulled a lever to move the engine to a point where contact between the flange or some other part of the wheel and the rail would complete the circuit and bring about the automatic change of 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 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 evidence of record discloses no grounds for disturbing the action of the carrier in the instant case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of December, 1939.