

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Royal A. Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
LOUISVILLE & NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Louisville & Nashville Railroad, that the Carrier is violating the terms of the telegraphers' agreement by permitting and/or requiring train and engine service employes to handle orders pertaining to or affecting train movements and to block or report trains, by the use of the telephone at Wilders, Ky. and that so long as the Carrier elects to have work of this character performed at this point it shall be performed by employes under telegraphers' agreement."

EMPLOYES' STATEMENT OF FACTS: "An agreement bearing date October 1, 1927 as to rules and working conditions, and August 1, 1937 as to rates of pay, is in effect between the parties to this dispute.

"At Wilders, Ky., in the Cincinnati Terminals district of the Cincinnati division, train and engine service employes of freight train movements between Cincinnati, Ohio, and Latonia, Ky., are regularly required, by the use of the telephone, to call for and receive verbal instructions from the train dispatcher pertaining to and affecting the movement of their trains over this single track section of railroad, extending between Newport, Ky., and Latonia, Ky., a distance of approximately four (4) miles."

POSITION OF EMPLOYES: "The Scope Rule 1 of the prevailing telegraphers' agreement provides:

'The following rules and rates of pay shall apply to all wire chiefs, telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators, operators of mechanical telegraph machines, staffmen, and such freight and ticket agents as listed herein.'

"Rule 16 of said agreement provides:

'No employes other than those covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call, and so advised by the Chief Train Dispatcher.'

"Rule 1 covers all positions of telephoner, the work of which is generally recognized to include the reception and transmission of train orders, messages and reports of record by means of the use of the telephone. Rule 1 also covers all positions of block operator, the work of which is generally recognized to include the blocking of trains by the use of the telegraph or telephone between telegraph or telephone offices.

claim mentioned by the Employees, a period of more than 25 years having elapsed since the use of the telephone was adopted as an instrument of transmission for yardmasters' instructions.

"In the event the Board assumes jurisdiction in this dispute, then the claim should be denied as the agreement is not being violated nor has it ever been violated by the Carrier. No train orders are being used nor have they been used for eight years. When used prior to 1932 there was no violation of the agreement as no operator had ever been used at the point in question."

OPINION OF BOARD: The long delay in asserting this claim does not bar the employees from complaining of a violation of the contract by continuing course of conduct or otherwise. But, under the controlling and distinguishing facts of the case, such delay is cogent evidence that there has been no violation. Compare Award 1289.

The practice complained of is one of long standing. During its continuance there have been revisions of the contract, without correction, if correction be needed, of this practice. That is persuasive that, for eleven years or more, the employees themselves have not regarded it as a violation of their contract.

No telegraph office is, or has ever been, maintained at Wilders. So, Rule 16 does not apply. That is quite aside from the fact that the work is yard work, customarily done without written "train orders" and by direct oral or hand signal direction. See Award 1396 Docket TE-1448.

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 for the reasons stated, no violation of the Agreement has been shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of April, 1941.