**Award No. 1567**
**Docket No. TE-1406**

# NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

**George E. Bushnell, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY**

**STATEMENT OF CLAIM:** "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway, that the work of operating signals and/or switches by the means of devices manipulated from a central point, is work coming within the scope of the Telegraphers' Agreement and shall be performed only by employes under said Agreement; that the carrier is violating the terms of the Telegraphers' Agreement by permitting and/or requiring employes not under said Agreement to operate signals and switches at Abilene, Kansas and Scott City, Kansas, by means of devices manipulated from a central point; and that if the carrier elects to continue the operation of signals and switches by means of devices manipulated from a central point at Abilene, Kansas, or at Scott City, Kansas, this work shall be assigned to and performed by employes under the Telegraphers' Agreement."

**EMPLOYES' STATEMENT OF FACTS:** "The carrier permits and/or requires employes not under the Telegraphers' Agreement to operate signals and switches at Abilene, Kansas, and Scott City, Kansas, by means of devices manipulated from a central point.

"An agreement, bearing effective date of December 1, 1938, is in effect between the parties to this dispute."

**POSITION OF EMPLOYES:** "The Telegraphers' Agreement reads, in part:

'SCOPE RULE

This schedule will govern the employment and compensation of

Agent-Telegraphers,
Agent-Telephoners,
Telegraphers,
Telephone Operators (except Switchboard Operators),
Towermen,
Levermen,
Tower and Train Directors,
Block Operators,
Staffmen,

and such Agents and other employes as may be shown in the appended wage scale.'

work has been recognized as proper to be required of flagmen or brakemen. Therefore, the Board decides that the handling of the interlocking plant in question may properly be required of the trainmen.'

"The operation of the Stevens' machine at Scott City and the cabin-type interlocker at Abilene is properly and logically the work of train service employes, by whom it has been performed since the devices were first placed in service more than twenty-six (26) years ago at Scott City and twelve (12) years ago at Abilene. Prior to the installation of such crossing protection devices train service employes 'flagged' across these crossings.

"The work of operating the devices in use at the railroad crossings at Abilene and Scott City does not belong to employes covered by the Telegraphers' Schedule and has never been performed by such employes at either point, such devices being specifically designed for the type of operation outlined at Abilene and Scott City. Until the claim at Scott City was filed with the Superintendent of the Colorado Division by the local chairman on March 8, 1940, no protest had ever been made by the Petitioners or anyone else to the operation of the Stevens' machine at that point by train service employes. The perfectly normal situation at Scott City has been accepted and ratified by the employes through the first schedule on this property dated November 1, 1919 and through subsequent schedule revisions of February 5, 1924 and December 1, 1938. As to Abilene, the handling now in effect is no different than it was in 1931 when exactly the same question was handled by the Santa Fe Telegraphers' Adjustment Board and the United States Board of Mediation. The employes' acceptance of the practice at Abilene without protest since 1935 and the subsequent negotiation of the new agreement effective December 1, 1938 also without protest or reservation is evidence of their acceptance and recognition of previous decisions in such disputes and the propriety of the handling in effect at Abilene.

"That there is absolutely no basis for the claim under the Telegraphers' Schedule has been amply demonstrated, and the facts as set forth herein call for its denial. The Carrier cannot, however, refrain from placing in bold relief the preposterous demand of the employes in this claim, which in substance is that the Carrier be required to establish levermen's positions at the two points to perform an insignificant function consuming an average of five (5) minutes per day on week days at Scott City and perhaps ten (10) or fifteen (15) minutes per day at Abilene, paying therefor a minimum of eight (8) hours per day for each leverman's position established.

"The Carrier has not been served with a copy of the employes' submission, other than its statement of claim, consequently it is not informed with respect to the alleged facts, contentions and/or allegations which the employes' ex parte submission may contain. The Carrier, therefore, has dealt only with the contentions and/or allegations heretofore presented to the Carrier by the employes and such other matters as in its considered judgment are pertinent to the dispute. The Carrier, however, reserves the right to submit evidence in rebuttal of any alleged facts, contentions and/or allegations made by the employes in their ex parte submission, or to any other submission which the employes may make to your Honorable Board in this dispute."

**OPINION OF BOARD:** The facts stated by the parties are not disputed. The cabin interlocking plant at Abilene was placed in service January 17, 1928 and the derail and signal locking machine at Scott City was installed on December 22, 1913. Both have been operated continuously by train crews since these dates.

The problem disclosed by the claim is one of long standing. It was presented to the Santa Fe Telegraphers' Adjustment Board in 1931, which Board was unable to reach a decision. The services of the United States

Board of Mediation were unsuccessfully invoked by the employes in 1932 because the carrier declined to arbitrate. See Case No. GC. 1023. In declining arbitration the carrier claimed that the principle involved had been decided in its favor on two different occasions. See Case 203 of Railway Adjustment Board No. 1, heard September 10, 1918 and Decision No. 3926 of the United States Railroad Labor Board dated November 23, 1925.

The carrier now claims that there is nothing in the Agreement between the parties, effective December 1, 1938, requiring it to place the telegraph employes in the cabin at Abilene and at the machine at Scott City, and that the failure of the parties to include these positions in the 1938 Agreement requires denial of the claim, citing Award 1075.

It argues that even if the claim is proper under the 1938 Agreement its rules do not support the claim, citing Award 1078.

It insists that decisions of previous Boards of Adjustment warrant denial of claim, citing Decision 3926 and Case No. 203, supra.

The employes on the other hand insist that the operation of these two interlocking plants is work coming within the scope of their Agreement with the carrier, citing its Scope Rule and Article II.

They argue that under General Order No. 27 and Supplements 13 and 21 of the United States Railroad Administration their right to this work was fixed by that Board's Interpretation No. 4 to Supplement No. 13. They cite Awards 137, 231, 255, 323, 553 and 993.

The employes deny that the Agreements of 1924 and 1938 changed the situation in any respect since their first Agreement was negotiated in 1919. They say that the Scope rule has not been changed since the "interlocking plants in question were created" and that "under the Scope Rule and Article II this carrier has obligated itself to assign employes covered by the Telegraphers' Agreement work of the character involved in the instant case." It asks that the carrier be required to comply with its Agreement, citing Award 602.

The question as thus developed resolves itself into the fairly simple question of whether the devices at Scott City and Abilene must be operated exclusively by employes covered by the Telegraphers' Agreement because of the provisions of its Scope rule and Article II.

Interpretation No. 4, supra was in effect a Scope rule similiar to that in the current Agreement. See in this connection Award No. 1078.

Case No. 203, supra, decided that the handling of an interlocking plant at West Quincy on the Quincy, Omaha and Kansas City Railroad, "may properly be required of the trainmen."

Decision No. 3926 held on a question propounded by the Order of Railroad Telegraphers that the Texas and Pacific Railway was within its rights in abolishing three positions of levermen at Mineola Tower and requiring trainmen to operate the levers controlling the Mineola crossing.

Award 553 of this Division rendered on December 27, 1937 by Referee Millard, involved a comparable situation with that involved in the instant claim, the same parties and the same Scope rule. That case, however, differs from the one under consideration in that the positions there in question "were definitely negotiated into the Schedule" and it was, therefore, decided that the work could not be assigned to employes covered by another Agreement without negotiation and Agreement between the parties. See also Award 993.

The question presented here for decision does not involve the abolishment or restoration of positions that have been negotiated into the Agree-

ment but instead is a claim that the work in question is covered by the Agreement even though the carrier refuses to permit it to be performed by employes embraced by the Agreement.

It is well established that the Board cannot alter or extend the terms of the Agreement. See Award 1290 and those therein cited.

The work in question was never performed by the Telegraphers nor was it negotiated into the Agreements of 1919, 1924, or 1938.

Article II of the Agreement provides for the fixing of compensation when new positions are created but that rule does not authorize the Board to characterize work that has been done by trainmen since 1913 at Scott City, and since 1928 at Abilene as new positions.

The employes who perform this work are not those designated in the Scope rule or "in the appended wage scale."

This Board is without any authority to make a new Agreement for the parties by including therein work or positions which the parties themselves have not included in their Agreement. See Awards 389 and 1290.

In the light of the terms of the Agreement and the controlling Awards herein cited the claim must be denied.

**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 no violation of the existing 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 18th day of September, 1941.