

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson—Referee

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PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY

(Line West of Buffalo)

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad Company, Line West of Buffalo, that:

(1) The Carrier violates the current Agreement when it requires employes, whose seniority rights are confined to Seniority District No. 2, to operate the remote control panel which governs the operation of switches and signals at W. Crossover on Seniority District No. 1.

(2) That the Carrier shall now be required to restore such tower work to employes covered by Seniority District No. 1 roster.

**EMPLOYES' STATEMENT OF FACTS:** There is in evidence an agreement between the parties bearing effective date of July 1, 1946, as to rules of working conditions, copy of which is on file with the Board and by reference is made a part of this Statement of Facts.

Under the rules of the current agreement between the Carrier and the Organization seniority districts with clearly defined limits are set up, and, the following seniority districts are clearly provided for:

ARTICLE 24

Seniority Districts

(h) Seniority Districts are as follows:

District No. 1—Erie Division: Main Line and Valley Branch.

District No. 2—Erie Division: Youngstown, Oil City, J. F. & C. Branches.

District No. 3—Cleveland Division: Cleveland Terminal District and Cleveland Union Terminals Co.

District No. 4—Toledo Division: East of Vickers.

Cleveland Division: Alliance Branch and L.E. & P. Branch.

District No. 5—Toledo Division: Vickers and West.

3. Temporary vacancies on this position of five (5) days or more will be filled as provided in Article 13(c) of the Telegraphers' agreement and interpretation thereto.

(sgd) G. B. Foote  
Supervisor Wage Schedules

(sgd) J. J. Beattie  
General Chairman, O. R. T."

The 3rd trick clerk-telegrapher position has subsequently been filled from Seniority District No. 2 and appears as the last position listed under Seniority District No. 2 on Page 29 of the Wage Scale of the July 1, 1946 Agreement, and the remaining positions of clerk-telegrapher in the Erie Dispatchers' office are listed under Seniority District No. 1 and appear on Page 26 of the Wage Scale.

Attention is also directed to reference in the June 16, 1939 letter from General Chairman Beattie—Carrier's Exhibit No. 1—to a similar arrangement in the dispatchers' office at Toledo, whereby in October, 1937 a similar agreement signed jointly by management and the then general chairman, P. K. Pickard, provided that the 3rd trick clerk-telegrapher position in the dispatchers' office at Toledo be bulletined and assigned to telegraphers on Toledo Division East, Seniority District No. 4, the 1st and 2nd trick clerk-telegrapher positions in the same office to remain in Seniority District No. 5. The 3rd trick clerk-telegrapher in the Toledo dispatchers' office is listed as the first position under Seniority District No. 4, Page 31, and the 1st and 2nd trick positions in that office listed on Page 34, under Seniority District No. 5, current agreement.

In the above-mentioned instances there was no suggestion that additional positions should be established in the dispatchers' office at Erie or at Toledo merely because telegraphers on two seniority rosters contended they had equity rights to such positions.

There is, therefore, ample precedent to dispose of the instant dispute. A similarly negotiated agreement covering an agreed-upon equitable division of work in "OD" Tower between telegraphers in Seniority Districts No. 1 and 2 would be no innovation with the Telegraphers in either district and certainly would not be unreasonable in view of the fact that the carrier is satisfied to continue existing working conditions in "OD" Tower with District No. 2 forces, but the employees insist on a change in the situation which is not, in the carrier's opinion, justified by the facts.

**CONCLUSION:** The carrier has shown that

1. No rule of the Telegraphers' Agreement was violated.
2. All work involved in this claim is performed by Telegraphers' Agreement employees.
3. No additional positions in "OD" Tower are warranted, as the employees claim.
4. The whole issue in this case is whether telegraphers in Seniority District No. 1 have prior rights to work in "OD" Tower necessary in connection with remote control now performed by Tower Directors in Seniority District No. 2.
5. The claim has no basis in fact, is wholly without merit and should be denied.

(Exhibits not reproduced)

**OPINION OF BOARD:** The facts giving rise to this dispute are substantially as follows: Prior to July 29, 1932, Carrier maintained a tow

"W" crossover which controlled main line movements at the west end of Ashtabula yard as well as main track crossover switches and turnouts for train movements into and out of the west end of the West Yard. "W" tower was staffed by three telegraphers-levermen holding seniority rights in Seniority District No. 1. Effective July 28, 1932, the interlocking plant at "W" tower was permanently discontinued and crossovers and switches operated therefrom were changed to hand operation, some signals were taken out of service and the two westward home signals on Tracks 1 and 3 and two eastward home signals on Tracks 2 and 4 were changed to automatic. From July 28, 1932 to May 6, 1947, the crossovers and switches were operated by hand by yardmen and trainmen as required for movement of their trains in and out of the west end of the Ashtabula West Yard. Effective 8:00 A. M., May 6, 1947, the automatic signals were changed to interlocking and thereafter the crossovers, switches and signals were operated by remote control handled by the Tower Director on each track in "OD" Tower, which tower directors hold seniority rights in Seniority District 2.

The employes and the Carrier are not in accord with respect to the amount of through traffic and diverging traffic at "W" crossover. The Carrier's defense is substantially that the operation of the remote control of the crossover to lead switches at "W" require little of the time of the director of "OD" tower and that the agreement does not require the Carrier to create additional positions where they are not needed.

In May of 1947 when the Carrier changed the operation of the crossovers and lead switches at "W" from hand operation to operation by remote control panel from OD, it is apparent that such work was removed from train and yardmen and then became telegraphers' work. The factor of the operation of the crossovers and lead switches by train and yardmen for fifteen years without objection by the Order, in our opinion, does not affect this conclusion. The Order may well have been willing to concede that on hand operation such work was not covered by the scope rule of their Agreement, but when mechanically operated, we believe that it is clear that the work of handling the crossovers and lead switches at "W" was within the scope rule of the Telegraphers' Agreement, and hence, should have been assigned to employes in the Seniority District in which it belonged. If such work were in Seniority District No. 1 when "W" tower was in operation and the Seniority District were not changed in the meantime, when it again became Telegraphers' work in May of 1947, it should have been allocated to Seniority District No. 1 employes, unless by negotiation another allocation were agreed upon. This principle is well-established under previous awards of this Board. The factor of the amount of work involved does not affect the operation of the principle. See Award No. 1611. In view of what we have said above, the claim of the employes must be sustained. If, as the Carrier contends, the amount of work involved is extremely small, it should have requested a change in the Agreement as provided for in Article 35 thereof.

Although we appreciate the binding effect of our award, we cannot conclude this opinion without suggesting to the parties, as we did in Award 3659, that negotiation in good faith is the proper method for arriving at the solution of problems such as that presented in this case. While the arrangement made by the Carrier was doubtlessly motivated by proper considerations of economy and operating procedures, its execution infringed upon the terms of the Agreement with its employes and the method of negotiation, rather than of ex parte action, should have been followed. See Award 388.

**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 Carrier violated the Agreement.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1948.