

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD COMPANY
BUFFALO AND EAST**

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

(a) The Carrier violated the rules of the Telegraphers' Agreement when on January 22, 23, 28, 29; February 3, 8, 9 (two occasions), 10, 13, 18, 20; March 1, 10, 22, 25, 29; April 1, 10, 11, 15, 22, 26, 30; May 2, 5, 7, 8, 9, 12, 19, 28; June 1, 2 (two occasions), 11, 12, 16, 21, 24; July 10, 11, 19, 22, 29; August 16, 19, 22, 23, 24; September 6, 14, 18, 20, and October 8, 11, 12, all in 1947, said Carrier required or permitted train service employes to perform block operator duties and "OS" (report arrival and departure of trains) by telephone at Boston Corners, New York, outside of the assigned hours of the agent-telegrapher, and

(b) In consequence of said violation the Carrier shall be required to compensate the incumbent of the Boston Corners agent-telegrapher position on the "call" basis for each of the above violations, and as well a "call" payment for any similar violations subsequent to October 12, 1947.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, hereinafter referred to as the Telegraphers' Agreement, bearing effective date of January 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Boston Corners is a one-man station employing an agent-telegrapher, whose assigned hours, six days a week, are generally 8:45 A. M. to 5:45 P. M., however, the assignment September 28, 1947 through December 10, 1947 was 8:35 A. M. to 5:55 P. M., or twenty minutes overtime each working day. These assignments provide for one hour for meal.

On the dates shown in the Statement of Claim and subsequent dates at Boston Corners the Carrier requires or permits train service employes, outside of the agent-telegrapher's assigned hours, to report the arrival and departure of and block trains, by telephone. During his assigned hours the agent-telegrapher regularly reports the arrival and departure of and blocks trains, and said agent-telegrapher is occasionally held on duty or called back on duty to perform these functions.

The agent-telegrapher has continuously displayed in the station building his address and telephone number and is willing and available to perform "call" service.

OPINION OF BOARD: The Carrier maintains a one-man station at Boston Corners, New York, employing an Agent-Telegrapher who is assigned 8:45 A. M. to 5:45 P. M., six days per week. There are variations in the assignment shown in the record which are not material to a disposition of the claim. On the days specified in the claim, it is alleged that the Carrier required or permitted train service employees to report the arrival and departure of, and to block trains by telephone outside the assigned hours of the Agent-Telegrapher. The Agent-Telegrapher claims a "call" payment for each of the alleged violations.

The Scope Rule of the Telegraphers' Agreement provides:

"This agreement will govern the employment and compensation of telegraphers, telephone operators (except switchboard operators), agent telegraphers, agent telephoners, towermen, levermen, tower and train directors, block operators, agents, assistant agents, wire chiefs, telegrapher-levermen and telephoner-levermen, as shown in attached wage scale, hereinafter referred to as employees.

Employees performing service in the classes specified in the preceding paragraph shall be classified in accordance therewith."

The claim grows out of the operation of the Rutland Milk Extra, a train operated without timetable status. The evidence shows that two or three times a week, it meets train No. 26, a superior train, at Boston Corners, after the Agent-Telegrapher's assigned hours. In clearing the main track for the superior train at Boston Corners and again in securing the right to occupy the main track after passage of the superior train, the Conductor of the Rutland Milk Extra communicated by telephone with the Telegrapher at Copake Falls, a point five miles north of Boston Corners or with a Telegrapher at Millerton, a point seven miles south.

The work performed by the Conductor of the Rutland Milk Extra consists of notifying the operator at Copake Falls when his train is on the siding and the main track switches properly lined, advising the operator at Copake Falls when the superior train has passed and in gaining permission from the same source for his train to again occupy the main track for the purpose of continuing its trip. This work is performed by the Agent-Telegrapher when he is on duty. The question posed is whether this is work which the Telegraphers are entitled to perform.

The Scope Rule of the Agreement includes many designated positions including block operators. The use of a telephone in facilitating such work is consequently Telegraphers' work. Is the work performed by train service men in the present case blocking work? We think it is.

Notifying the operator at Copake Falls that the superior train had passed the meeting point seems to us to be 'OS' work as it is used in railroad parlance. We are convinced that this is work which the applicable Agreement reserved to telegraphers. Award 3397. This rule is not intended to apply to the use of a telephone in intra-yard operations or points subordinated to a yard or office for operational purposes.

The Carrier contends that a certain unsigned Memorandum of Understanding dated February 5, 1941, which the parties have ratified orally or by conduct, permits the acts to be performed in the manner here done. If the Understanding be a binding agreement, the Carrier's position would be the correct one. But the Memorandum of Understanding has no such force and effect. This was determined in Award 4281, and we adhere to the conclusion therein reached.

The practice employed at Boston Corners has been going on for many years. It was acquiesced in to some extent during the war years, at least the claimed violation of rules was allowed to lie dormant during that period. It was the subject of unsuccessful negotiation commencing in 1937 and culminating in the draft of a supplemental agreement which was never executed. It appears to have been a subject of dispute in more recent times.

The Organization claims that the Agent-Telegrapher should be compensated on a "call" basis for each violation subsequent to January 22, 1947. We find nothing in the record inconsistent with the scope of this claim. An affirmative award is required.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of January, 1949.