

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
ATLANTIC COAST LINE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad Company, that the Carrier in requiring and/or permitting employes other than those covered by the Telegraphers' Agreement to perform the recognized duties of Towermen and/or levermen in the Tower at Uceta Yard known as "AY" Tampa, Florida, is in violation of the Telegraphers' Agreement, and that,

Telegrapher-Levermen W. J. Scheider, C. L. Strandberg, T. H. Fox and V. G. Cooper shall each be paid a call respectively, at various times and on various dates between March 23, 1941, and September 30, 1946, both dates inclusive, as set forth in the Employes' Position, when train and engine service employes in violation of Telegraphers' Agreement operated levers in the said tower outside of the assigned hours of the respective claimants.

EMPLOYES' STATEMENT OF FACTS: Prior to the summer of 1932 three telegrapher-levermen were employed at "AY" Tower Uceta Yard, Tampa, Florida, covering the twenty-four hour period each day. The Agreement dated December 1, 1929, between the Association of Agents and Operators and the Atlantic Coast Line Railroad Company shows three positions at this Tower. In 1932 the third trick telegrapher-leverman position was first abolished during the summer months and members of train crews were required to operate the levers when entering or leaving the Yard to and from the main line. At the time the third trick telegrapher-leverman was cut off the organization representing the agents and telegraphers was known as "The Association of Agents and Operators" commonly called by the employes "Company Union." The Order of Railroad Telegraphers signed the first Agreement on December 10, 1937, at which time all three tricks were being worked at "AY" Tower, Uceta Yard. The levers at "AY" Tower Uceta Yard govern the switch leading in and out of the Yard to the Main Line and also signals protecting the movements in and out of the freight yard while passenger trains continue on the main line in and out of the Union Station in Tampa, Florida. Normal position of switches and signals are for the main line. The positions at "AY" Tower Uceta Yard are incorporated in the Agreement between The Order of Railroad Telegraphers and the Atlantic Coast Line Railroad Company. This Tower has both train dispatcher and message telegraph and telephone circuits in it which are used by the telegrapher-levermen.

Regular assigned men were J. H. McDonough on first trick, 8:00 A. M. to 4:00 P. M. W. J. Scheider second trick 4:00 P. M. to 12 Midnight. V. G. Cooper, third trick 12 Midnight to 8:00 A. M.

work, not the handling of switches. The responsibilities which constituted the essence of the clerk-telegrapher positions at "AY" during the time and on the days these clerk-telegraphers were not worked, were performed by other employes of the same craft, at another nearby station, if such duties became necessary. Additional duties, for which they received supplemental compensation, since it was work of another craft which they were performing for the convenience of the carrier, could properly be returned to the craft from whence they were originally removed, and such was here the case in the handling of the switch to the yard lead.

The claim in this case is one that is not covered by the agreement between the Carrier and its Telegraphers. It is presumed to be based upon awards of this Division covering cases on other railroads and is, therefore, nothing less than a request for a new rule. An examination of the awards rendered by this Division on the question here at issue shows that these awards have been rendered, generally speaking, on the basis of specific rules between the management and employes, giving to the employes certain rights to service. It has been ruled by this Division to the effect that where a rule exists, no amount of practice can change such rule. In the instant case there exists no governing rule, and in view of that fact Carrier submits that the question here involved is one for negotiation between the parties, not one for determination by this Board.

It is the position of this Carrier that the case here presented by the Telegraphers' Organization is based upon unsound principle, lacks foundation, and is untenable in its entirety, and since no violation of the existing agreement has been shown, this Board is requested to deny the claim.

(Exhibit not reproduced.)

OPINION OF BOARD: This case involves the work of handling a switch and signal at or near Carrier's "AY" office on the north yard lead to Uceta Yard. The switch and home signal are handled by clerk-telegraphers at the "AY" office when they are on duty. The "AY" office was established on July 1, 1926, and three clerk-telegraphers were assigned around the clock for the handling of train orders, telegraphing, and certain clerical work. In addition to the rate of these positions, they were paid \$4.00 per month for handling the switch to the north yard lead, thereby expediting the movement of trains to and from Uceta Yard. This switch was located about 272 feet north of the "AY" office. On February 20, 1934, the signal was installed at a point approximately 287 feet north of the "AY" office and governs south-bound trains entering Uceta Yard. This signal is connected with the switch to the north yard lead in such a manner that the switch cannot be lined for trains to enter or leave Uceta Yard until the signal has first been set to protect trains on the main line. This claim arises out of the abolishment of the third trick clerk-telegrapher position and the assigning of the handling of the switch and signal to train crews when no clerk-telegrapher is on duty. The claim also includes Sundays and holidays on which train crews were required to perform this work.

The signal in question is set with levers located in a small building about 86 feet north of the "AY" office. The switch itself is manually opened and closed. The normal position of the signal permits the passage of mainline traffic. Before the switch to the north lead track can be opened or closed, the signal must be set to protect mainline traffic; otherwise the switch will not operate. We think this makes the handling of the signal and switch an interlocking operation within the meaning of the Agreement.

It must be conceded, of course, that the handling of manual switches is ordinarily the work of the operating crafts. It is evident that it was so considered by the Carrier and the Organization when it was agreed that additional compensation would be paid clerk-telegraphers for performing that work. With the installation of the lever-operating signal, the clerk-telegraphers were required to handle the levers as a part of their regularly assigned work. While it is true that the current Agreement provides for two clerk-telegrapher positions at "AY" office, we think that all the work

of handling the levers in operating the signal is telegraphers' work at this point. The parties in handling the situation as they have, treated the handling of the switch as work outside the Telegraphers' Agreement and the handling of the lever-controlled signal as within it. Consequently, clerk-telegraphers may be required to handle the switch in accordance with the Agreement for extra pay (Art. 19, current Agreement) and to handle the lever-controlled signal as telegraphers' work which has properly been assigned to them to perform.

The first violation asserted in the present dispute occurred on March 23, 1941. On January 11, 1943, the Carrier's General Manager unequivocally denied the claim and the General Chairman indicated he would take the dispute to this Board. Nothing further was done to progress the claim to this Board until the Notice of Intention to File Claim was filed with this Division on April 26, 1948, more than five years after the claim had been denied by the Carrier's highest operating officer. Many violations appear to have taken place in the interim and the number of claims have mounted between the date of the General Manager's final ruling and the elimination on September 30, 1946 of the claimed rule violation. While the current Agreement fixes no time in which an appeal must be taken to this Board, public policy demands that it be made within a reasonable time and where, as here, the appeal has been inexcusably delayed to the injury of the Carrier, a claimant will not be permitted to profit by his own dilatory action. Consequently this Board will not permit consideration of or recovery for violations which claimant has permitted to pile up through his own want of diligence. The claim will be sustained for violations occurring from March 23, 1941, to January 11, 1943, inclusive.

The number of violations occurring during this period are not ascertainable from the record before us. We remand this portion of the case for further consideration on the property and direct that a joint check of train movements at this point be made to determine the number of violations that occurred from March 23, 1941, to January 11, 1943, inclusive, and the amount of loss resulting to claimants because thereof under the Call Rule.

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 Employee involved in this dispute are respectively carrier and employee 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

The Agreement was violated.

AWARD

First paragraph of claim sustained. Second paragraph of claim remanded in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1949.