

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, 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, Buffalo and East, that

(a) the Carrier violated the Memorandum of Understanding effective August 1, 1943, by denying payment to Telegrapher George L. Grattan for instructing a student in the operation of Signal Station No. 20, on January 31, February 1, 3, 4, 5, 6, 7, 8, 10, 11 and 12, 1947, and

(b) in consequence thereof, the Carrier shall now be required to pay Telegrapher Grattan on each of these dates, the rate of pay applicable to instructors as provided in paragraph 4 (a) of the Memorandum of Understanding.

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

Signal Station No. 20 is located alongside the Erie Canal in the vicinity of the Wayneport Coaling Plant. It is a continuously operated interlocking tower handling train movements on the four main line tracks as well as the single track West Shore Line of the Carrier on the Syracuse Division. There is also a Remote Control Panel Board machine located at the telegrapher-leverman's desk which operates switches and signals for train movements approximately over one mile distant.

Mr. George L. Grattan is employed as telegrapher-leverman on the first trick day position at Signal Station No. 20. At the time of the occurrence there were two employes on duty during the eight hour tour of duty on the day position—one telegrapher-leverman and one leverman. The duties of the telegrapher-leverman position, which is held by Claimant Grattan, covers the responsibility of handling all desk work in the Signal station such as recording all train movements on train sheet, the "OS" of all trains passing and stopping at SS-20, handling train orders, the remote control machine, all transportation communication of record, as well as the general supervision of the operation of the interlocking tower. The leverman is required to manipulate the manually operated interlocking machine levers, throwing switches and giving signals for the movement of trains.

The mere fact that Grattan "OKed" Robinson does not mean that Grattan performed the service of instructing Robinson in the duties of leverman, which was properly the duty of Leverman Rolland and actually performed by Rolland, as borne out by the latter's statement, corroborated by Robinson's statement.

CONCLUSION

The evidence herein presented conclusively shows that Student C. D. Robinson was instructed in the duties of leverman at Signal Station 20 by Leverman G. L. Rolland, who was accordingly paid the instructor's rate of 15½ cents per hour for that service in accordance with the Memorandum of Understanding effective August 1, 1943. The claim of Telegrapher-leverman Grattan for the instructor's rate during the hours Student Robinson was instructed by Leverman Rolland should, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On the days mentioned in the claim a student telegrapher received instruction at Signal Station No. 20. Carrier and Employees have an Agreement independent of the Rules Agreement which provides for extra pay on an hourly basis for Telegraphers required to instruct students. Claimant Grattan is a Telegrapher-Leverman on the first trick at the above named station in charge of all desk work and supervision of the operation of the interlocking tower. On the dates mentioned in the claim there was also a Leverman, one Rolland, working in the same station who is required to manipulate the manually operated interlocking machine levers, throwing switches and giving signals for the movement of trains. Carrier paid the Leverman the differential required for the instruction. Claimant asserts that he did the actual instructing and he files claim for the differential.

As to the other facts surrounding the claim there is conflict. Employees claim (1) that the student arrived at the station with no specific instructions and that Claimant, being in charge of the station, proceeded to instruct the student in the operation of the station; (2) that time slips submitted by Claimant were changed by Carrier so that Carrier paid the Leverman instead of Claimant; (3) that the General Chairman and Carrier's Superintendent met in conference and the Superintendent agreed to payment of the claim. As to (1) above Carrier asserts that the student was sent to the station with specific instructions to learn the duties of Leverman and he was instructed in the duties of Leverman by Rolland; as to (2) Carrier categorically denies that it changed any time slips; and as to (3) denies that the Superintendent agreed to payment of the claim.

These facts, however, are incontrovertible: (1) that the student was finally ok'd as qualified for the **Leverman's** position on February 12, 1948 by Claimant who was paid the differential for that date; (2) that the Agreement covering the differential provides that the additional pay shall not apply to more than one Telegrapher for the same hour of instruction; (3) that the student did no posting on the desk work during the period involved. The record further reveals that the student states that he was instructed by Rolland in the handling of the levers. Clearly, in the absence of any other evidence these factors would create a presumption that the Carrier had complied with the Instruction Agreement in paying Rolland, thus casting the burden upon the Employees of establishing that there was an understanding that Carrier had agreed to pay Claimant. There is no evidence of such an understanding except the assertion of the Employees which is denied by Carrier. We are unable to draw any inference from the record or from the conduct of the parties in favor of either the affirmation or denial of such understanding. Accordingly the Employees have not sustained the burden of proof above mentioned and therefore we hold that 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of July, 1949.