

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD,
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 provisions of the Telegraphers' Agreement effective August 1, 1948 (corrected to July 1, 1948), when it required or permitted employees not covered by the scope of the Agreement to copy train orders at BA cabin on October 21, 23, 26, November 2, 5, 8 and 20, 1948.

(b) in consequence thereof the carrier shall be required to pay to the senior idle employee a day's pay at the premium rate in effect on the seniority district covered by the schedule for each of the above listed violations as well as all others subsequent to October 1, 1948.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties, herein referred to as the Telegraphers' Agreement, bearing effective date of July 1, 1948, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

"BA" Cabin Ghent is located on the Harlem Division of the Carrier. A telephone is located at this cabin which permits communication with the train dispatcher. Commencing on or about October 1, 1948, operators of track motor cars used as fire patrolmen received train orders direct from the train dispatcher covering movement of their track motor cars as extras with rights over opposing trains.

The orders issued were on regular form "19" used for handling train movements.

The Organization filed claim for payment for each improperly handled train order. The Carrier denied the claim.

POSITION OF EMPLOYEES: As indicated in the Employees' Statement of Facts, which is admitted by the Carrier, section foremen or operators of track motor cars, were permitted or required to copy train orders at closed station "BA" at Ghent, New York, on the Harlem Division, on week days commencing on or about October 1, 1948.

The Carrier arranged for fire patrol protection along its right of way from Ghent, New York, on a section of the Harlem Division during the Autumn

1. No Telegrapher was employed at the location involved and, therefore, none was deprived of work.
2. There was no violation of any agreement provision as charged by the Employees.
3. No train order within the coverage of Article 22 was handled at Cabin BA.
4. Employees are trying to obtain from this Board, a pay provision that they failed to obtain in the form of a rule in an arbitration proceeding terminating in June 1948.

OPINION OF BOARD: Ghent, New York, was an agent-telegrapher's station prior to August 14, 1933. Since that date, the station has been closed and no telegrapher has been assigned at that point. Cabin BA, as it now exists, is a crossing watchman's shanty in which there is a connection with the dispatcher's telephone circuit. On the days enumerated in the claim, track motor cars were being used in this area on seasonal fire patrol. On each of these days, the section foreman received movement orders direct from the dispatcher at Cabin BA. Whether these movement orders (Form M) were train orders, train line-ups or movement permits is not material for in any event it was telegrapher's work and not that of any other craft. Awards 4882 and 4516.

The more serious question is the penalty to be imposed for the violation. The Organization contends that the senior idle telegrapher should be paid a day's pay at the minimum rate in the seniority district in which the violations occurred. In this connection it appears that a new train order rule (Article 22) was sought by the Organization and the same obtained by arbitration in 1948 but the request for one day's pay when train orders were handled by persons outside of the Telegraphers' Agreement at locations where a telegrapher was not employed, was not granted. An interpretation of Rule 22, as awarded by the Arbitration Board, declined to construe the rule to mean that one day's pay should be granted where telegrapher's work was performed by persons outside the Telegraphers' Agreement at locations where a telegrapher was not assigned. We are bound by the agreement as written and interpreted by the Arbitration Board whose business it was to negotiate and make the agreement. It is our function to interpret and apply the agreement in the settlement of claims and grievances outside the field occupied by the Arbitration Board. Whatever the rule may be under agreements on other carriers, we are required to say that under the agreement before us the penalty of one day's pay on each day that telegrapher's work is performed at a location where a telegrapher is not assigned cannot be sustained. The Arbitration Board has clearly expressed an intent that such a penalty was not in order under the rule which it arbitrated. We are bound by the determination made.

The record shows that Cabin BA was 2.37 miles south of Chatham, New York, where positions under the Telegraphers' Agreement were assigned. We think the Carrier should be penalized for the violation occurring at Ghent, under the rule and interpretation awarded by the Arbitration Board, by the payment of a call to the senior available telegrapher at Chatham and the claim will be sustained to that extent.

The Carrier quotes the interpretation of the Arbitration Board as follows: "Obviously, the Carrier could not have a telegrapher on every track car * * *. It would merely impose a penalty which the Carrier would be unable to avoid." It urges that in the present case that the imposing of a penalty would require a telegrapher at every outlying point or even with every motor car operating between stations. We do not think such a result follows. Certainly the Carrier is not required to assign a telegrapher at every outlying point or to have a telegrapher in proximity to every track motor car. But on the other hand the use of a telephone by a section foreman in obtaining a line-up or movement order from a dispatcher is in lieu of work which a telegrapher historically and traditionally performed. See Award 4516. The section foreman could have

called the telegrapher at Chatham and obtained his information without penalty accruing to the Carrier if a telegrapher was on duty at that point. This is so because his telephone conversation with the telegrapher at Chatham would have been in lieu of a trip or messenger and would not infringe upon the work traditionally and historically performed by telegraphers. It is true that the distinction appears to be trivial from the practical viewpoint but it is necessary in order to maintain consistency under the agreements as they are drawn. It is only by adhering strictly to the yardstick which measures the telephone work reserved to telegraphers that an orderly interpretation of the rules can be had.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties of this dispute waived oral hearing thereon;

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

That this Agreement was violated.

AWARD

Claim sustained for a call on each of the days specified in the claim.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of July, 1950.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 4967

Docket No. TE-4769

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: New York Central Railroad Company (Buffalo and East).

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3 First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The award of the Board in this case holds that the Carrier violated its agreement when it permitted a section foreman to receive movement orders by telephone direct from the dispatcher. Because of the reasons stated in the award, the penalty fixed was for a call to the senior available telegrapher at Chatham.

The Carrier urges that since a telegrapher was working at Chatham who could have performed the work here involved during his regular assigned tour of duty, that no basis for claim exists. It must be borne in mind that there was a violation of the agreement. Agreements are maintained by imposing penalties for violations. If no penalty is assessed there would be no deterrent to future violations and, consequently, similar violations could be continued with impunity. No such result is intended by the agreement. It is for this reason that the senior available employee is entitled to be paid for a call. In this respect the award is clear and unambiguous, and not subject to interpretation.

The Carrier asserts that the record before us when the award was made does not reflect all the facts and in view of additional facts presented in the application for an interpretation the award arrives at an incorrect conclusion. Granting for the sake of argument that this is so, it cannot benefit the Carrier. The award is necessarily based on the facts shown by the record. After the record is closed, new or additional evidence cannot properly be received. If this was not so, the awards of the Division would have no finality. An interpretation of an award may not properly be treated as a rehearing or a new trial of the merits of the case. Its purpose is to explain and clarify the award, not to make a new one. We are obliged to say that the only evidence properly before us for consideration is that appearing in the record at the time the docket was closed, that the evidence appearing in the application for an interpretation is outside the record and, consequently, the position of the Organization is correct.

Referee Edward F. Carter, who sat with the Division as a member when Award No. 4967 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of May, 1951.