

Award No. 5229

Docket No. TE-5263

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Francis J. Robertson, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE PENNSYLVANIA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad that:

1. The Carrier violated the terms of the prevailing agreement between the parties when, on October 20, 1948, it required and/or permitted the Conductor of BL-5 South, by the use of the train telephone, to act as block operator in clearing the block and "OS"-ing (reporting) the time his train passed "MOORE", "GW", and "WB" Block Limit Stations.

2. The senior idle employe on the seniority district be compensated an amount equal to eight (8) hours at the pro rata rate applicable to each of the Block Limit Stations named in Paragraph 1, on October 20, 1948, because not used to perform this block operator's work.

**EMPLOYES' STATEMENT OF FACT:** On October 20, 1948, the Conductor of Train BL-5, Engine 1437, South, was instructed by the Train Dispatcher to report to the Operator at "MG", the time his train passed "MOORE", "GW" and "WB" Block Limit Stations.

The Conductor complied with these instructions, and reported his train passing "MOORE" at 9:19 A. M., "GW" at 9:24 A. M., "WB" at 9:30 A. M., using a train telephone located in his cabin car for this purpose, his train not stopping at either location.

**POSITION OF EMPLOYES:** There is an Agreement in effect between the parties, Regulations and Rates of Pay, effective May 16, 1943. The Board is in possession of copies of this Agreement. This Agreement is divided into two Parts, Part II governing in this case.

The following Rules of Agreement are invoked as governing in the instant case and supporting the claim of the Committee.

**PART II**

"Provisions governing Managers, Assistant Managers, Wire Chiefs, and Assistant Wire Chiefs, Train Directors and Assistants, Telegraphers, Telephone Operators (except Telephone Switchboard Operators), Block Operators, Operator-Clerks, Levermen and Printer-Operators, employes of The Pennsylvania Railroad Company."

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, Subsection (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

#### CONCLUSION.

The Carrier has shown that the service here in question has been performed by trainmen in accordance with the accepted practice since long before the effective date of the applicable Agreement. The Carrier has shown that only the method and not the principle of reporting trains clear of Block Stations has been changed and that the method in question cannot be construed, under the Schedule Agreement, as an infringement on the duties of Block Operators, or a violation of the "Scope" of the Agreement. It follows that the Claimant is not entitled to the compensation which is claimed.

It is, therefore, respectfully submitted that the claim is without foundation in the Agreement under which it is being progressed and should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Carrier maintains a manual block system on the Branch where this claim arises. Under this system, Carrier has established certain unattended block limit stations which are controlled by operators in regularly attended block stations. These operators are covered by the Telegraphers' Agreement. On the date mentioned in the claim, the conductor of a freight train was given a clear block from one attended block station to the next attended block station. He was, however, required by the instructions of the dispatcher (transmitted to him by an operator) to report to the operator controlling the intervening block limit stations the time of passing each of the latter stations. The conductor used a train telephone to report the passing time to the operator. The Employees file claim as indicated because of this use of the train telephone by the conductor.

It appears from the record that block limit stations equipped with way-side telephones have been in existence for many years on this Carrier. Their use was a constant source of contention between the Carrier and the Employees, culminating in an Agreement in 1938 between Carrier and the Employees that such unattended block limit stations as were then in existence would be accepted but no more created. So far as appears from the record, the block limit stations here involved were then in existence. Manifestly, the Employees in accepting these block limit stations, accepted them as they were then functioning and such work as was done thereat by employees not covered by the Telegraphers' Agreement must be presumed to have been properly performed insofar as the Telegraphers' Agreement on this property is concerned. (See Award 4085, penultimate paragraph in Opinion of Board.)

The Employees admit that the practice of train crews reporting their own train into clear at block limit stations is unquestioned. However, they assert that such reporting refers only to reporting clear when taking siding.

Carrier, however, asserts that the established practice has been for trainmen to report clear of block limits by use of the wayside telephone; that no different work was performed in the use of the train telephone.

The distinction attempted to be made by the Employees with respect to reporting into clear is technical in the extreme. On the argument of this docket, it was admitted that passing or side tracks were not located at each block limit station. Logically, at such points, some purpose with respect to train movement, must have been served; otherwise, there would be no need for the stations. A reading of the Master File upon which Awards 4042 and 4085 were based lends support to the Carrier's version. Although those cases involved issues in connection with the abolishment of positions and discontinuance of attended stations, there is discussion of the functioning of the block limit stations and the work performed by trainmen thereat. Clearly, this issue of fact must be resolved against the Employees. It follows from this conclusion that on the date mentioned in this claim, the trainmen performed the same work by means of train telephone as they performed previously by the use of the wayside telephone. As previously pointed out by the Agreement of 1938 and conduct, the Employees must be presumed to have accepted that work as being properly performed by employees other than those covered by the Agreement. The fact that the train phone instead of the wayside phone was used in its accomplishment does not alter the basic nature of the work. There is no basis for a sustaining Award.

**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 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 February, 1951.