

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Central Railroad Company of New Jersey that

(a) The carrier violated the provisions of the Telegraphers' Agreement when on March 12, 1949, it declared that the two positions of Operator-Switch Tender at Hampton, New Jersey, were abolished without at the same time abolishing all of the work, and

(b) the incumbents of these positions of Operator-Switch Tender at the time of alleged abolishment by the carrier on March 12, 1949, shall be returned to their former positions at Hampton and paid for any wage loss, plus expenses resulting from this improper act, and

(c) All other employees under the Telegraphers' Agreement who were adversely affected by these unilateral and violative acts of the Carrier shall be returned to former positions and be compensated for all wage loss and expenses incurred from March 12, 1949 to date of correction of violation.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of June 15, 1944, amended September 1, 1949, is in effect between the parties hereinafter referred to as the Telegraphers' Agreement; copies thereof are on file with the National Railroad Adjustment Board.

Hampton, New Jersey, is an originating and terminating point for passenger trains which operate between Hampton and Jersey City on double track main line. The Hampton Local Freight crew also originates and terminates at Hampton Yard.

A storage yard for passenger and freight equipment, in addition to the engine terminal, is located at Hampton.

All switches governing the movement of trains in and out of Hampton Yard are hand thrown.

Prior to March 12, 1949, the carrier maintained two seven-day positions under the Telegraphers' Agreement at Hampton, N. J., classified as Operator-Switch Tenders. The Operator-Switch Tenders at Hampton, N. J., were responsible for all train movements at that point during their regular tour of duty, operating all switches by hand, as well as all communication service such as reporting trains arriving, departing and passing Hampton, also handling train orders and messages.

Tuesday, March 8, 1949

Passenger Trains				Helper, Drill, light engines, track cars or freights using crossovers				Freight Trains (reported only)		Passenger Trains (reported only)	
East	West	East	West	East	West	East	West	East	West	East	West
200 4:55A	205 6:43P			Lite 624	6:38A	Drill 157	3:10P	3	4	1	3
202 6:35A	207 7:13P					Lite 624	3:40P				
	209 8:11P										
Wednesday, March 9, 1949											
200 4:55A	205 6:43P	Lite 624	6:37A	Track Car 132	3:21P			4	7	1	3
202 6:35A	207 7:13P			Drill 157	3:25P						
	209 8:11P			Lite 624	3:50P						
Thursday, March 10, 1949											
200 4:55A	205 6:43P	Lite 624	6:38A	Lite 624	3:05P			5	6	1	3
202 6:35A	207 7:13P	Track Car 113	3:30P	Track Car 132	3:22P						
	209 8:11P										

This check period was immediately prior to the abolishment of the switchtenders' positions and indicates the effect upon the crossover traffic by the termination of the War and the discontinuance of pusher service in this area.

POSITION OF CARRIER: To expedite traffic for the duration of the war emergency, Carrier created these positions; however, even during the time switchtender-operators were assigned, they were unable to handle all of the situations involved but only assisted the train crews in their crossover movements. When the need therefor was no longer present, the positions were abolished. With the abolishment, train crews again performed such of the duties as still remained just as they did prior to the War. That the handling of switches on this property is not exclusively the work of switchtenders, even where such switchtender positions had been abolished, has been decided on this property by the First Division in Docket 13656, Award 8448.

As no rule of the Order of Railroad Telegraphers' Agreement has been violated this claim should be denied.

OPINION OF BOARD: Petitioner avers respondent abolished the position of Operator-Switch Tender at the location involved herein but that in truth and in fact the work of such position remained and that employes not parties to the Schedule herein were performing such duties. The duties of said position consisted of (1) communication and (2) operating switches.

Carrier defends its action on the following grounds, to wit: (1) decrease in work and (2) the Petitioner does not have the exclusive right to protect the type of communication and switch work remaining to the date the position was abolished.

With reference to communication work existing subsequent to Carrier's act the record is replete with evidence pro and con as to whether or not such work traditionally and historically belongs exclusively to Petitioner's craft. However, that question is not here controlling.

As to operating switches we think there is little question but that the amount of such work did decrease. What that amounted to is another matter and again we find pro and con evidence in the record. Likewise this matter is not controlling. Carrier further urged that prior to abolishing the position Petitioner only assisted members of another craft to operate switches. Petitioner vigorously disputed this. The Board believes the Petitioner.

While the particular position we are concerned with was not negotiated into the Schedule, the work very definitely was. Regardless of what practice or custom prevailed prior to the adoption of the Schedule it disposed of the same. Nor does the possibility members of another craft may lay claim to

this work alter the matter; Carrier simply has not established an exception to the rebuttable presumption Petitioner has the exclusive right to protect such work.

The question of economics standing alone and by itself does not justify Carrier's action especially in the absence of a stronger showing than was here made. We do not mean to here hold decrease in work is not sufficient to justify the abolishment of a position but we do hold here a sufficient amount of work does exist such as not to justify Carrier in avoiding the Schedule. At least the record does not contain the evidence necessary to convince us of that fact.

Part C of the claim is dismissed in that it is inordinate, also see Award 2125.

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

That both parties to this dispute waived oral hearing thereon;

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 Schedule was violated to the extent shown in the above and foregoing Opinion.

AWARD

Parts A and B of claim, sustained. Part C of claim, dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of May, 1951.

DISSENT TO AWARD NO. 5357—DOCKET NO. TE-5320

To sustain parts (a) and (b) of the claim in this docket the Opinion held in part:

"As to operating switches we think there is little question but that the amount of such work did decrease. What that amounted to is another matter and again we find pro and con evidence in the record. Likewise this matter is not controlling. Carrier further urged that prior to abolishing the position Petitioner only assisted members of another craft to operate switches. Petitioner vigorously disputed this. The Board believes the Petitioner.

While the particular position we are concerned with was not negotiated into the Schedule, the work very definitely was. Regardless of what practice or custom prevailed prior to the adoption of the Schedule it disposed of the same. Nor does the possibility members of another craft may lay claim to this work alter the matter; Carrier simply has not established an exception to the re-

buttable presumption Petitioner has the exclusive right to protect such work.

* * * We do not mean to here hold decrease in work is not sufficient to justify the abolishment of a position but we do hold here a sufficient amount of work does exist such as not to justify Carrier in avoiding the Schedule. * * * (Underscoring added.)

Facts are that prior to September 1, 1942 trainmen handled all their switches. On that date, because of war impact and large number of oil trains running, Carrier established two (2) new positions of operator-switchtender, to expedite train movements through Hampton, N. J. during hours 3 P. M. to 11 P. M. and 11 P. M. to 7 A. M., by (1) reporting passing trains and other communications with train dispatchers and (2) handle switches.

During the hours 7 A. M. to 3 P. M. trainmen handled their own switches.

Handling switches for train movements is historically an ordinary part of a trainman's duty. When two (2) new positions (operator-switchtender) were abolished on March 12, 1949 the reporting of passing trains and other communications with dispatchers were abandoned and trainmen returned to handling their own switches.

To hold that the handling of switches between the hours 3 P. M. and 7 A. M. was definitely negotiated into a schedule, and thereby became exclusively Telegraphers' work is (1) not supported by any rule of the Agreement negotiated between the parties June 15, 1944, (2) does in effect write a new doctrine or rule which is not within the authority of this Board and (3) does violence to generally recognized practice of having trainmen handle their own switches.

(s) R. M. Butler
(s) R. H. Allison
(s) A. H. Jones
(s) J. E. Kemp
(s) C. P. Dugan