

Award No. 5502

Docket No. TE-5452

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York, New Haven and Hartford Railroad, that:

(1) the Carrier violated and continues to violate the terms of the agreement between the parties when it permitted and/or required and continues to permit and/or require, employees not subject to said agreement, by use of the telephone, to report (OS) trains, obtain permission for trains and motor hand cars to occupy and use main tracks within designated block limit territories, report the time that trains and motor hand cars clear such block limit territories, (block operators' functions) and copy motor hand car orders Form 1433-b, at Woodside and Caryville, Massachusetts; and,

(2) in consequence of these violations at Woodside and Caryville, Massachusetts, the Carrier should compensate the two senior idle employees under the agreement on the Boston Division seniority roster each an amount equal to a day's pay of eight hours for each day, beginning September 9, 1948, and continuing each day thereafter that such violations exist.

EMPLOYEES' STATEMENT OF FACTS: An agreement, bearing effective date of June 15, 1947, as to rates of pay and working conditions is in effect between the parties to this dispute.

Woodside, Massachusetts, (formerly designated West Medway) is located on a single track portion of the railroad which extends from a point in, or near, Boston, designated as S. S. 185 to Caryville, Massachusetts, a distance of 25.29 miles, and is 1.24 miles east of Caryville. Caryville, the terminus of this branch line, is located at the west end of the Woodside Yard.

Positions covered by the scope of the agreement were formerly maintained at Caryville and West Medway (now Woodside), but were abolished by the Carrier in 1938 and 1931 respectively.

We have recently discovered that conductors of trains, employees not within the scope of the agreement have, since the abolition of telegraph positions at Caryville and West Medway, been making regular use of the telephone at those two stations for the purpose of releasing the block upon their arrival, and to obtain the block before departing; also to copy clearance cards and train orders governing the movement of trains.

to the identical station in circumstances indistinguishable from the present is controlling and should be followed in this proceeding.

Accordingly the claim should be denied in every particular.

(Exhibits not reproduced.)

OPINION OF BOARD: The evidence presented in this docket discloses that the claim here presented is not the claim presented by the Organization to the Carrier on December 8, 1948 and subsequently handled on the property. That claim was a request by the Organization "that an employe coming under the scope of our Agreement be established at Woodside to handle communication service at that point."

The Organization contends that the matter of money payments for work denied was discussed in conference. However, Rule 26 of the applicable Agreement provides that "claims for money payments alleged to be due, arising from the application of rules of this Agreement, may be made by the employe or his representative and must be presented in writing to the employe's immediate superior officer." Discussion in conference does not comply with the rule requiring that the claim be presented in writing.

Hence we find that the claim here presented has not been handled on the property in accordance with the Agreement between the parties or as required by Section 3, First, (i) of the Railway Labor Act as amended and Circular No. 1 of the National Railroad Adjustment Board. Hence the claim must be dismissed.

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 Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934; and

That the claim is not properly before this Board.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1951.