

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, 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 when on September 20, 1949, it declared abolished all telegraph service positions at Signal Station "ON" Lyons Junction, New York and closed that station without in fact discontinuing the work performed by these telegraph service employees at that point, and transferred the work of those positions, and assigned the performance of same to employees not covered by the Telegraphers' Agreement as well as telegraph service employees on another seniority district; and

(b) The work formerly performed by the telegraph service employees on the Syracuse Division at "ON" Lyons Junction shall be restored to the Telegraphers' Agreement and performed only by employees coming within the scope of such agreement on the proper seniority district; and

(c) All employees adversely affected by the Carrier's improper action in removing from the Telegraphers' Agreement on the Syracuse Division work previously performed by the telegraph service employees at Signal Station "ON" Lyons Junction, shall be compensated for all monetary losses sustained, plus travel and waiting time and any necessary expenses incurred.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of July 1, 1948 with supplemental agreement dated 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.

Lyons Junction, New York, is a connecting point between the four track main line and the West Shore Branch of the Syracuse Division, with the Fall Brook subdivision of the Pennsylvania Division. Prior to September 20, 1949, there were three signal stations located in this territory at Lyons.

Carrier exercised poor judgment when the tricks were abolished, but it does not furnish a basis for a holding that the Agreement was violated."

CONCLUSION

The Carrier has shown that under the applicable agreement between the parties to this dispute, the closing of Signal Station "ON" did not constitute a violation of the Agreement.

It is, therefore, respectfully submitted that the claim is without foundation and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Since there is no limitation thereon in the Agreement, there is no question but that the Carrier can properly discontinue a signal station and abolish the positions thereat provided that the work is abolished or transferred to other employees under the Agreement in the same seniority district. This claim is based upon the allegation that the work of telegraphers at signal station "ON" was transferred, after its discontinuance, to train service employees and to telegraphers at signal station "WD" in a different seniority district.

The Carrier admits liability for a day's pay to a telegrapher on 76 tricks when train crews used the telephone at "ON" to contact the dispatcher. Careful review of the evidence leads to the conclusion that the Carrier violated the Agreement by permitting or directing other actions there.

Signal station "ON" was located at the junction of the single track West Shore Branch and a single connection to the Pennsylvania division. The switch is normally set for traffic passing to the Pennsylvania division. After the discontinuance of signal station "ON", train crews on through West Shore Branch trains were directed to and did use the telephone at "ON" to contact the operator at signal station "WD" to obtain permission to cross the switch and to report when the switch was in normal position after passing. It also appears that upon occasions, the operator at signal station "WD" reported such information to the Syracuse division dispatcher. We consider that, under our prior awards, such communications were work belonging to telegraphers holding seniority on the Syracuse division. Communications by train crews to telegraphers on another seniority district and by them with the dispatcher on the Syracuse seniority district were violations of the Agreement making the Carrier liable for a day's pay to a Syracuse division telegrapher on each trick during which such work was performed.

The Organization also maintained that throwing the hand switch at "ON" was work belonging under the Agreement because of its performance by the former telegraphers at "ON". The throwing of switches has never been considered to be work belonging exclusively to any one class or craft of railroad employees. The Agreement here involved recognizes that throwing switches is not normally the duty of a telegrapher by providing extra pay when they are required to do so.

We have heretofore held that we have no authority to direct the re-establishment of positions so that the Carrier may be free to adopt any arrangement within the rules of the Agreement to remove the violation. Meanwhile from September 20, 1949 until the violations stated herein are corrected, the Carrier is liable for one day's pay to a telegrapher holding seniority on the Syracuse division for each trick upon which such a violation occurred.

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

The Carrier violated the Agreement.

AWARD

Claim sustained in accordance with the Opinion only.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1951.