

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY (Line West)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Line West of Buffalo, that

(a) The Carrier violated the rules of the Telegraphers' Agreement on November 20 and 25; December 9, 11, 13, 16, 19, 23, 27, 30, 1947; January 10, 14, 17, 22, and 24, 1948, when it required or permitted the Conductor of Ypsilanti Extra who has no seniority under the Telegraphers' Agreement to perform the duties of an Operator when he communicated direct with the Operator at Wabash Tower, Adrian, Michigan, and requested and secured permission to crossover the Main Track at Hillsdale and reported clear of main track at a time of the day when the second trick Clerk-Telegrapher at Hillsdale was available but not on duty and not called or used to perform this work, and

(b) In consequence of this violation the Carrier shall be required to compensate the incumbent of the Hillsdale, second trick Clerk-Telegrapher position for a "Call" under Article 5 of the Telegraphers' Agreement for each of the above violations, and until discontinued.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between the parties bearing effective date of July 1, 1946 as to rules of working conditions, copy of which is on file with the Board and by reference is made a part of this Statement of Facts.

Hillsdale is a manual block station on the main line of the New York Central Railroad, known as the Old Road, between Toledo, Ohio and Elkhart, Indiana, a distance of 142.42 miles. Manual block system is in use between Vulcan and "B" a distance of 138.47 miles. Hillsdale is the terminus of the Ypsilanti Branch of the Michigan Central Railroad. The Ypsilanti Extra arrives at Hillsdale in some instances within the assigned hours of the second trick telegrapher and in such instances permission to enter the main track in order to crossover was obtained from the telegrapher at Hillsdale whose duties embrace the performance of the manual blocking service required under the rules. On other occasions the Ypsilanti Extra arrives at Hillsdale outside of the assigned hours of the second trick telegrapher and in such instances the conductor uses the train dispatchers' telephone circuit for reporting to the train dispatcher the arrival of his train at Hillsdale and that it is ready to

"This Board does not sit as a court of equity. We must interpret the applicable Agreement provisions as they were drawn by the parties. **It would be a usurpation of authority to allow compensation to an employe where the Agreement does not authorize it.** The remedy is by negotiation and not by faulty interpretation." (emphasis added)

In Award 4305; the Third Division, with Referee Frank Elkouri, in the third sentence of the second paragraph of the Opinion of Board, reiterated statement previously made in Award 2132 with Referee Sidney St. F. Thaxter, as follows:

"In Award 2132 this Board said: '. . . it is not advisable, even to reach a result which might appear equitable, to attempt to read into a rule something which is not there. * * *'"

It is common knowledge that the very nature of railroad operations requires that many employes of various classes, some of whom are subject to collective bargaining agreements and others in the non-agreement class, use the telephone with more or less frequency every day in performing their customary duties. This is not a new condition but has prevailed on NYC System properties for more than 50 years. It has been given due recognition by the Board in cases involving properties of this System. One case, Award 700, has already been referred to.

In another case on the Big Four, Award 1553, the Board reaffirmed those principles in the fifth paragraph of Opinion of Board as follows:

"We, therefore, hold that it is not a violation of the Telegraphers' Agreement for a section foreman or operator of a motor to secure line-ups from a telegraph operator by use of the telephone, nor is it a violation thereof for him to copy such line-up so received for his use out on the line, though the line-up form provides space for certain information." (emphasis added)

CONCLUSION: Carrier has shown that:

1. The claims are not valid under applicable agreement rules;
2. Telephone conversation, under conditions pertinent to these claims, to and from a point where no operator is on duty and between trainmen, enginemen or other employes and the operator on duty at the nearest open station represent ordinary railroad operation and they are not violative of any agreement provisions;
3. Favorable consideration of claims such as these would create impossible situations not only at Hillsdale but at every location along the right-of-way of the carrier where telephones are located for the use of employes not subject to the Telegraphers' Agreement and would do violence to reasonable, efficient and economical operation of the railroad;
4. The employes are endeavoring to obtain from the Board a broad interpretation of rules which have remained unchanged for almost 50 years which would give them a new rule and certain exclusive rights which they have not obtained by direct negotiations on the property.
5. The entire case is built up on untenable premises entirely at variance with practical operation, is not supported by any rule, practice or precedent and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: At Hillsdale, a manual block station, telegraphers are assigned and on duty from 6:45 A.M. to 10:45 P.M. When the station is closed the block extends from Adrian, which is east of Hillsdale, to Sturgis,

which is west of Hillsdale. On the dates mentioned in the claim the Ypsilanti Extra arrived at Hillsdale during the time that the station was closed. The conductor of that train communicated by telephone with the block operator at Adrian to obtain permission to cross the main line and again to report his train clear of the main line track.

In Award No. 4516 we set forth the principles which determine whether telephone communications are such as have been reserved to telegraphers under the scope rule of their agreement or whether they are such as may properly be performed by persons not under the agreement. We held that the telephone communication work reserved to telegraphers was that which they traditionally performed prior to the advent of the telephone and we said:

"We adhere to those awards which hold that the use of the telephone by persons not under the Telegraphers' Agreement at a station when an assigned operator is off-duty and available for a call, is a violation of the Agreement and entitles the operator to payment for a call."

In Award No. 4287, involving the same parties, we held it to be a violation of the Agreement for a train conductor to telephone from a station, at a time when the operator was off duty, to the next station to advise that his train was on the siding and then to advise of the passage of the superior train to obtain permission to again occupy the main track. In Awards Nos. 4373, 4374, 4375 and 4376, involving the same parties, we applied that determination to similar situations without the assistance of a referee.

In Award No. 4575, involving the same parties, we held it to be a violation of the agreement for a train conductor to telephone from a station, at a time when the operator was off duty, to the next station to report his train clear of the main track at the end of his run.

If there be any distinction between those cases and this one, it is a distinction without a difference because the principles involved are identical. Hence, we consider that those awards control our decision herein.

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 the Carrier violated the agreement.

AWARD

Claim sustained.

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.