

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
NORTHERN PACIFIC RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Northern Pacific Railway; that,

(1) since September 10, 1950, this Carrier has violated the scope and other rules of the Telegraphers' Agreement by imposing upon the telegraphers at Stampede, Washington, without their consent, the duties and responsibilities of operating the ventilating fans in Tunnel No. 3 near that office;

(2) these duties shall be removed from the telegraphers at Stampede unless a mutually satisfactory compensation for their performance is reached by the Carrier with the duly accredited representatives of these employees; and

(3) until the violation mentioned above is corrected or suitable compensation for performance of these duties has been negotiated, the Carrier shall pay to these telegraphers who have occupied the positions at Stampede, for each hour they have had the responsibility for operating the tunnel fans and seeing that Tunnel No. 3 is properly ventilated, the minimum hourly rate called for by the Carrier's agreement with the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, the agreement under which all of this work was prior to September 10, 1950 performed, and under which it is now being performed a portion of the time.

EMPLOYEES' STATEMENT OF FACTS: An agreement between the parties, effective April 1, 1948, (as amended) and hereinafter referred to as the Telegraphers' Agreement, is, by this reference, placed in evidence in this dispute.

Tunnel 3 is a two mile tunnel across the summit of the Cascade Mountain Range between Stampede and Martin, Washington, on the Tacoma Division. The main line is double track approaching Stampede from the west and Martin from the east, and converges to single track through tunnel 3. The automatic block signal system terminates westward at Martin and eastward at Stampede. Traffic through tunnel No. 3 is controlled by staff block system which is handled by the telegraphers at Stampede and Martin located at each end of the tunnel respectively.

Because of the length of the tunnel and the lack of other ventilating facilities, circulating fans are utilized at the ends of the tunnel for the

the place of an employe receiving a higher rate will be paid the higher rate. This Division assumed jurisdiction over the merits of that dispute by virtue of the application of the so-called preservation of rate rule and in its Opinion said:

"Claimant is before us on his own agreement, effective May 1, 1945. Rule 32 of that agreement contemplates the probability that he may be called upon to fill the place of another employe receiving a higher rate of pay."

While Awards Nos. 3489 and 4714 of this Division involved claims where employes subject to the jurisdiction of this Division were compensated in accordance with the rules of an agreement governing employes subject to the jurisdiction of the First Division, it is significant to note that the Employes relied upon a rule to the effect that an employe temporarily assigned to higher rated work would receive the higher rate and that by virtue of the application of this rule it became necessary to examine another agreement to ascertain the rate established for the work performed. No such rule appears in the Northern Pacific Telegraphers' Agreement and no similar rule has been cited by the Employes to sustain this claim. Consequently Awards Nos. 3489 and 4714 of this Division represent additional authority for the contention that the telegraphers employed at Stampede must rely upon the rules of the Telegraphers Agreement to sustain their claim for payment at the stationary engineer's rate. In the absence of a rule in the Telegraphers' Agreement that authorizes an examination of another agreement to ascertain a rate of pay, this Division lacks authority to examine the rules of the agreement with the International Brotherhood of Firemen and Oilers and render an award on the merits of that phase of the claim for payment at the stationary engineer's rate for each hour telegraphers are responsible for the operation of the ventilating fans.

The Carrier has shown that not only by custom and practice but upon the authority of this Division telegraph service employes may be assigned work incident to or in proximity to their positions without payment of compensation, in addition to the established rate; that the telegraphers employed at Stampede in operating the tunnel ventilating fans by remote control switches are performing work incident to or in proximity to their positions; and that consequently the request that the work of operating these tunnel ventilating fans by remote control switches be removed from employes unless additional compensation is agreed to, is not tenable.

The Carrier has likewise shown that the telegraphers employed at Stampede are paid a rate in excess of the basis rate established for stationary engineers and that aside from any other consideration, this phase of the Employes' claim has been fully satisfied.

The Carrier has also shown that the claim for payment at the stationary engineer's rate for each hour these telegraphers are responsible for the operation of the tunnel ventilating fans involves the interpretation and application of an agreement with the International Brotherhood of Firemen and Oilers and that this Division is not vested with authority to interpret the agreement with that organization.

The claim covered by this docket should be denied in its entirety.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representatives of the Employes, and is made a part of the particular question in dispute.

(Exhibits Not Reproduced)

OPINION OF BOARD: This case is before us because of the Carrier requiring telegraphers to operate certain tunnel ventilating fans. The work consists of turning on and off an electric switch, which is the remote control for starting and stopping the tunnel ventilating fans. The switch is located

in the telegraph office. The Carrier has established a certain procedure covering the times which the fans must be turned on and the duration of time which must pass before they should be turned off.

The claim here is for pay at the minimum hourly rate called for by the Carrier's Agreement with the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers for each hour that telegraphers have had the responsibility of operating the tunnel fans since September 10, 1950. Prior to September 10, 1950 the work was performed by stationary engineers, coming under the Agreement of the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, but since that date employes from said Brotherhood have performed the services only a portion of the time, as provided by an Agreement between the Carrier and the Brotherhood.

One of the questions for our determination is whether the Carrier has wrongfully assigned work belonging to another craft to the telegraphers or is this work such as may be added as an incidental duty without penalty or need for negotiation.

The facts of this record do not support the contention that operating the electric switch to turn the ventilating fans on and off was work to which the stationary engineers held exclusive right. This conclusion is reached by us on the basis of the record before us. This Division, having no jurisdiction over the craft to which the stationary engineers belong, can do nothing which affects the rights of that craft. It does, however, become necessary for us to examine the evidence relating to certain allegations herein made in order to determine if this present claim is proper and has merit.

Thus, having concluded that the Organization has failed to prove that the work was the exclusive work of the other craft, we must determine if the work is such as may properly be assigned to these claimant telegraphers.

The Carrier contends that the work has been properly given to the telegraphers as an incident to their regular duties. To give weight to this contention it is further asserted that the work was in proximity to the place where the telegraphers performed their regular duties.

The work was conveniently located, but the nature of the work was completely foreign to the customary duties of telegraphers. Rule 5 (c) of the current Agreement is not so broad as to cover this situation. That rule contemplates assignment of duties relating to the station.

Operating the ventilating fan switch is strictly a remote control means of performing a function which is entirely unrelated to the station.

This work does not appear to be hard work, either physical or mental, but it does certainly place an added responsibility upon the telegraphers—a responsibility never contemplated by the Agreement nor permitted by the historical concept of telegraphers' work.

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 Employes involved in this dispute are respectively Carrier and Employes 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 has violated the Agreement.

AWARD

Parts one (1) and two (2) of the claim are sustained.

Part three (3) of the claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of September, 1952.