

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, 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 the provisions of the agreement between the parties when it required or permitted the Conductor of Train AB-2 Engine 538 to perform block operator duties by the use of the telephone at Norfolk, Massachusetts on December 13, 1951.

(2) In consequence of this violation the Carrier shall compensate C. A. Wheeler, Agent-operator at Norfolk a call payment as provided under Article 7.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of June 15, 1947, revised September 1, 1949, is in effect between the parties, hereinafter referred to as the Telegraphers' Agreement.

Norfolk, Massachusetts is a one-man station located on the single track portion of the Boston Division, at which there is employed an Agent-Operator with assigned hours:

6:40 A. M. to 3:40 P. M. Monday through Friday
Rest Days—Saturday and Sunday.

On December 13, 1951, at 6:18 A. M. the Carrier required or permitted the Conductor of Train AB-2 Engine 538 to perform block operator duties at Norfolk station and neglected to call the occupant of the Agent-Operator position at this station to protect his work which the Organization contends is covered by Article 1 (Scope Rule) of the Agreement extant between the parties.

The Organization, on behalf of Claimant C. A. Wheeler, Agent-Operator at Norfolk, made claim for payment of the equivalent of a "call" because the Claimant was not called to perform this service. The Carrier declined the claim.

POSITION OF EMPLOYES: The position of Agent-Operator at Norfolk, is listed at Page 60 of the currently effective agreement. The Agent-Operator

The facts in the instant case place it on all fours with the quoted finding and denial. At Norfolk there has never been assigned any employee under the Telegraphers' Agreement other than the single agent-operator. As in the Rising case, and as evidenced by that docket, it has for many years been required operating practice that trains clear or obtain the block by telephoning the nearest operator on duty.

In these circumstances upon the authority of Award 5431 and upon the whole record Carrier respectfully submits the claim should be denied.

All of the facts and arguments used in this case have been affirmatively presented to Employees' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: At Norfolk, Massachusetts, there is a position of Agent-Operator assigned 6:40 A.M. to 3:40 P.M. A freight train-conductor used the train dispatcher's telephone circuit at 6:18 A.M. at Norfolk to report to an operator at Blackstone that he was standing at Norfolk. This information enabled the operator at Blackstone to afford a clear block to a passenger train from Blackstone to Franklin, an intermediate point between Blackstone and Norfolk, thus allowing it to proceed at full schedule speed between these two points instead of at a restricted speed.

The issue in this case may be simply stated as being whether or not the scope rule of the Telegraphers' Agreement was violated by the action of the conductor in reporting the location of his train. The scope rule of the instant agreement, among others, contains the classifications of Agent Telegraphers, Agent Telephoners and Block Operators. It does not define or delineate the work reserved to those classifications.

The mere reporting of the position of a train in a given block to the nearest block station is clearly not an infringement upon the telephone work reserved to the telegrapher class. That is the type of communication which before the advent of the telephone would have been given to the operator by a personal trip or messenger. The telephoning of such a report does not constitute blocking of trains because the conductor does not keep a block sheet, nor does he have the right to give a clear block to other trains. On this property, however, it is clearly recognized by the Carrier that where a conductor clears a block at a recognized block station outside the hours of duty of the assigned man (except in an emergency) the assigned operator is entitled to a call. (Greenbush settlement.) It is contended here by the Carrier that Norfolk is not a block station. Admittedly, however, Franklin (intermediate Norfolk and Blackstone) is a block station. The call the conductor made to Blackstone cleared the block from Blackstone to Franklin at a time when the assigned operator at Franklin was off duty. If the conductor had made this telephone call at Franklin under the Greenbush settlement, the operator would have been entitled to payment under the Call Rule, for the reason that the conductor would have been performing communications work covered by the scope of the Telegraphers' Agreement. The communications work here performed was similarly covered whether Norfolk be considered as a block station or not for the obvious reason that Franklin was a block station and the communication by-passed the Franklin Operator. There is no showing of an emergency. It follows that the claim should be sustained.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of October, 1954.

DISSENT TO AWARD NO. 6800, DOCKET NO. TE-6677

This Award is in error for the reason that it rewrites the rule by incorrectly construing a practice based upon a so-called Greenbush settlement in order to fabricate a claim for the Operator at Franklin in the event a call should be made from that block station in similar circumstances, notwithstanding that that Operator is not involved in the instant case. The Award also attempts to create a new "by-passing feature, which is not contained in the rule, practice or precedents, in order to sustain the instant claim for the Operator at Norfolk. In so doing, it violates this Division's authority, as this same Referee recognized in the following excerpt from Awards 4357 and 4464:

"* * * to sustain the claim herein would require us to write a new rule into the agreement by interpretation, something which this Board has no power to do."

Even based upon the incorrect practice construed herein, the instant claim should have been denied. The Referee, upon questioning by a Carrier Member, indicated that, if the call from Norfolk had been made to the Operator at Franklin instead of to the Operator at Blackstone, the claim would have failed.

For the foregoing reasons we dissent.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ E. T. Horsley

/s/ J. E. Kemp

/s/ C. P. Dugan