

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Eastern Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway System, that:

1. The Carrier violates the agreement between the parties by refusing to adjust the rates of the three telegrapher positions in the freight depot at Streator, Illinois, to properly compensate for the added duties and responsibilities incident to the operation of a remote control or CTC device activating interlocking switches and signals located at Ancona, Illinois, 6.2 miles west of Streator, and

2. The Carrier shall now make an upward adjustment in the rates of said telegrapher positions at Streator, Illinois, amounting to 10c per hour, retroactive to June 15, 1947.

EMPLOYEES' STATEMENT OF FACTS: Agreements between the parties bearing effective dates of December 1, 1938 and June 1, 1951 are in evidence.

At Page 62 of the current Agreement we find the following positions listed:

Streator "N" Telegrapher	(3)	(L)	1.72
Wabash Tower Telephoner-Towermen	(3)	(L)	1.585

At Page 27 of the 1938 Agreement the following positions are shown:

Streator "N" Telegrapher	(3)	.74
Wabash Tower Towermen	(2)	.63

The section of the railroad involved here is double track. Prior to some time in 1947 the Carrier maintained a station at Ancona, Illinois in which was located an interlocking plant equipped with manually operated levers which controlled cross over switches and signals governing the movement of trains crossing from one main line to the other or entering or leaving the branch track between Ancona and Pekin, Illinois. These levers were operated by employees covered by the Agreement at Ancona.

Again in Third Division Award No. 2983, is found the following:

"This Board cannot create new rates for the employes coming under the contract of the Signalmen, nor can it make an award on a subject not processed as provided under the law."

What follows is taken from Third Division Award No. 3224:

"The fact remains that this Board is powerless to fix rates of pay unless the standard for so doing can be found in the Agreement. This Board can require the payment of rates required under some rule of the Agreement, but in the absence of such a rule, the Board lacks the authority to act, for such action would be the equivalent of negotiating an agreement. We can find no rule in the current Agreement containing any standard applicable to the present situation. A denial award is therefore required."

In Third Division Award No. 3484 is found further confirmation of the principle as follows:

"It is not within the jurisdiction of the Board to establish new wage rates. Under the circumstances here, that should be done by negotiation and agreement of the parties.

"For want of jurisdiction that claim must be dismissed. See Awards 2682, 3373."

There are many awards similar to those which have been referred to in the immediately preceding paragraphs, but this one final reference to Award 5131 should suffice:

"On the basis of the entire record, the Board concludes that the subject matter of this dispute involves a proposed adjustment in rates of pay and, since the existing Agreement does not afford a basis for Board action, the dispute must be settled on the property."

In conclusion, the Carrier respectfully reasserts that the claim of the employes in the instant dispute is nothing more than an attempt to obtain an increase in the fixed and agreed to rates of pay of the three telegrapher positions at Streator in disregard of the express provisions of Article XXV of the governing Telegraphers' Agreement and is entirely without support under the Agreement rules and should be either dismissed or denied in its entirety.

The Carrier is uninformed as to the arguments the Organization will advance in its ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in replying to the Organization's ex parte submission or any other subsequent oral argument or Briefs presented by the Organization in this dispute.

All that is contained herein has been both known and available to the Employees or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to July 15, 1947, Carrier maintained a station at Ancona in which was located an interlocking plant equipped with manually operated levers which controlled cross over switches and signals governing the movement of trains crossing from one main line to the other or entering or leaving the branch track between Ancona and Pekin, Illinois. These levers were operated by employes covered by the Agreement stationed at Ancona who received basic pay not in excess of claimants'. On July 15, 1947, with the approval of the Interstate Commerce Commission, there was placed in service at Streator a certain electric device to control the switches

and signals at Ancona, 6.2 miles westerly, which were formerly operated manually by the mechanical interlocker at that point. Incumbents of the telegrapher positions at Streator were assigned to operate this control device and employees filed claim as indicated. Although the original claim filed describes the new control panel equipment as "remote control or CTC device activating interlocking switches and signals at Ancona" the employees contend in their submission and throughout the record that the equipment was "CTC" and not remote control as urged by the Carrier. Employees likewise contend in the original claim an agreement violation because of a refusal to adjust rates to properly compensate for added duties and responsibilities but subsequently argue that the additional assignment created new positions.

The Carrier contends the assignment merely added duties to Streator telegrapher positions which action was not a proscribed practice under the agreement. Carrier also cites practice of almost 40 years standing, which prevailed through negotiation and revision of four agreements, wherein duties incident to the operation of remote control machines or panels have been assigned Telegraph Service employees without increase in the fixed or established rates of pay of the affected parties.

The Employees invoke the following rules in the agreement bearing effective date of December 1, 1938:

"SCOPE

Article II—Classification, New Positions, etc.

Article XX—Seniority and Promotion—Road Division"

These rules are set forth in full in the submissions. Their claim generally appears to be based on Article II (b) which reads:

"When new positions are created, compensation will be fixed in conformity with that of existing positions of similar work and responsibility in the same seniority district."

For this rule to become operative it would require the Board to find that the operation of the control device installed at Streator so changed the duties of the telegraphers so as to create new positions. This record does not support that conclusion. Past practice on the property will support our finding that new positions did not result from the assignment in question.

Insofar as any support for Employees' position could be obtained from the provisions of Article 11 (a) which provides that where existing payroll classification does not conform to the scope of this schedule, employees performing service in the classes specified therein shall be classified in accordance therewith, we must hold that this docket does not present a case requiring new classifications under the Scope Rule. There is no position listed as "Telegrapher CTC Operator."

The Employees in their ex parte submission, filed with the Board on April 14, 1954, mention for the first time an "aggravation" of the violation when in 1951 additional equipment was installed at Kernan, Illinois, and connected to the control machine at Streator to permit telegraphers at Streator to control train movements at Kernan previously controlled by telegraph service employees located there in a manner similar to the manual controls operated at Ancona. The Carrier objects to consideration of this matter because it had not been progressed on the property. In view of the fact that Employees have not increased their original monetary claim of 10 cents per hour because of this "aggravation" and the Kernan change is similar to the Ancona change, we will consider it, for the purposes of this opinion, as an "aggravation" rather than a new claim and it will fall together with and for the same reasons heretofore advanced with respect to the Ancona claim.

This Board has no inherent authority to fix rates of pay. It is bound by the Agreement as the parties have written it. There being no rule to support the claim, it must be denied. See Award 6803.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummons
Executive Secretary

Dated at Chicago, Illinois this 2nd day of November, 1956.