

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware and Hudson Railroad:

1. That Carrier violated Agreement between the parties hereto, when on the 24th day of November, 1953, it required and permitted train service employes on Extra 4048 to perform work of a block operator at South Junction, New York.

2. That Carrier shall be required to compensate the senior idle employe, under the Telegraphers' Agreement, for eight hours' pay at the minimum telegraphers' rate on the Champlain Division for such violation.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an Agreement between the Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Company, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The Agreement became effective on the 1st day of July, 1944.

In accordance with provisions of the Railway Labor Act, as amended, this dispute was processed on the property in the usual manner, to and including the highest officer designated by Carrier to consider such claims, and has been denied. This Board, therefore, has jurisdiction of the parties and subject matter.

The dispute involves work of a block operator at South Junction, New York, performed by a train service employe, on November 24, 1953.

South Junction is located 4.6 miles south of Plattsburg, New York, at a point where the Ausable Forks Branch leaves the main line. There are storage tracks at this point, for use in storing cars. This is necessary because the yard in Plattsburg does not provide sufficient room.

Consequently, services of a switch engine in picking up loads at South Junction or placing empty cars at this point is quite frequent. The junction to Ausable Forks is used almost daily by a local freight train which leaves Plattsburg, thence to South Junction, thence to Ausable Forks and return to Plattsburg.

In compliance with these instructions, Extra 4048, north, called the train dispatcher upon arrival at South Junction and obtained a clearance to Plattsburg together with advice to the effect that all superior trains due had left. Although the train dispatcher asked and was told how many cars there were in the train, it was not necessary for him to have this information as the consist of the train would be the same at Plattsburg and the train dispatcher could readily obtain this information as soon as the train arrived at that terminal.

South Junction is not a train order or telegraph station, nor has there been any station or telegraph service there since 1939. The practice of crew members using the telephone to secure permission from the train dispatcher for the movement of their trains from South Junction to Plattsburg has been in effect since May 31, 1939.

It is traditional in the operation of a railroad that train service employees receive instructions or advice affecting the movement of trains over the telephone and this practice is not peculiar to the Delaware and Hudson.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made a part of the particular question in dispute.

(Exhibits not Reproduced).

OPINION OF BOARD: This is another dispute involving the question of whether the receipt by a member of a train crew of information necessary to the movement of a train at a point where no telegrapher is employed, is work belonging to telegraphers under the scope rule of their agreement. The facts are not dispute. At South Junction, 4.6 miles south of Plattsburg Station and 3.6 miles south of the southerly yard limit board at Plattsburg, the Ausable branch connects with the Carrier's main line. That branch is served by an extra crew which operates three days a week and is the only train serving the branch. South Junction is not a train order or telegraph office and there has been no telegrapher employed there since 1939. It has been the practice since 1939, when trains are ready to leave South Junction and enter onto the main line, for a crew member to telephone to the train dispatcher for clearance before moving on the main line to Plattsburg.

On November 24, 1953, at 11:16 P.M., a train service employe called the dispatcher from South Junction and asked if the train was cleared to Plattsburg. The dispatcher inquired as to the number of cars on the train, gave information as to the locations of four scheduled trains and cleared the extra into Plattsburg. At that time, trains leaving the Ausable branch were governed by the following special instructions in the time table.:

"Northward extra trains from the Ausable branch, before proceeding to main track, will call train dispatcher from telephone located on signal 162-1B to receive instructions."

The claim is for eight hours pay at the minimum telegrapher's rate for the senior idle telegrapher on the Division on the theory that the train service employe performed the work of a block operator when he called the dispatcher at South Junction. It was also contended during the handling on the property and before the Board that the incident described constituted the receipt by the train service employe of a train order in violation of the Telegraphers' agreement.

Petitioner contends that the work done by the train service employe, whether it was block operator work or the handling of a train order, is covered by the scope rule of the Telegraphers' agreement. Carrier contends that the work was neither block operator work nor train order handling; and that in any case, the practice since 1939 of allowing such calls to be made by

non-telegraphers, particularly in view of the fact that a new agreement was negotiated in 1944 without change in the scope rule, at a time when the practice had been going on for five years, indicates that this work was not intended by the parties to be covered by the rule. Carrier also cites the train order rule to support its contention that work similar to the work involved here may be performed by non-telegraphers at points where telegraphers are not employed.

It does not appear from the record that the work involved was block operator work. As to whether the information received was a train order, there is a more difficult question, since, although it was not issued in writing as a formal train order, it appears to have accomplished the same purpose. However, we do not think that this issue is controlling in the case. The basic issue is whether it can be said that the scope rule, which does not describe any work but merely lists positions, was intended to cover the kind of work here involved. In order to determine this, it is necessary to look to custom and practice. On this Carrier, the record reveals that for fourteen years prior to the incident complained of, it had been the practice at South Junction for train service employees to perform the work which is now the subject of this claim. The record discloses no prior claims in this connection, but it does disclose the negotiation of a new agreement containing the same scope rule at a time when the practice had been in effect for five years. The practice has continued since the negotiation of the new agreement and has been formalized to the extent of a special time table instruction.

Although Petitioner argues that the often-stated principle of this Board to the effect that when positions are abolished, the work of the position may not be given to employees of a different class or craft is applicable to this situation, we cannot agree. The telegrapher position was abolished in 1939 and train service employees have been calling the dispatcher for instructions since that time. In view of this long acquiescence by Petitioner both before and after the negotiation of a new agreement, we think that the propriety of the abolition of the telegraph position at South Junction is no longer open to question. We think the practice of the parties is controlling in this case and that the claim must be denied. See Award 7953.

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 agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1957.