

Award No. 8133
Docket No. TE-7451

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, 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 rules of the Telegraphers' Agreement when and because it required or permitted conductors to perform recognized duties of operators at Hyannis, Massachusetts, outside the assigned hours of said operators, and

2. As a consequence thereof the Carrier shall be required to pay the equivalent of a "call" to the occupant of the operator position at Hyannis, Massachusetts, for each and every occasion that such services were rendered by employees outside the coverage of the Telegraphers' Agreement, commencing October 31, 1953, until the date that the violation is discontinued by assignment of duties to employees under the agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement, hereinafter referred to as the Telegraphers' Agreement, by and between the parties, effective September 1, 1949, is in evidence. Copies thereof are on file with the National Railroad Adjustment Board.

Hyannis, Massachusetts, is an important city on Carrier's main line between Middleboro, Massachusetts, and Provindencetown, Massachusetts, in the Cape Cod area. Freight and passenger trains originate and terminate at Hyannis. At the time this claim originated, two positions of operator (telegrapher) were maintained at Hyannis, hours: 6:20 A. M. to 2:20 P. M., and 2:20 P. M. to 10:20 P. M., Mondays through Fridays. On Saturdays and Sundays, rest days of the respective positions, the incumbents of the positions performed service from 9:00 A. M. to 12:00 Noon, and from 4:00 P. M. to 7:00 P. M., being compensated therefor at rates provided by the "Call" and "Service on Rest Day" rules of the Agreement.

On October 31, 1953 and on certain dates thereafter, the Carrier required or permitted train service employees, outside the coverage of the Agreement, to report the arrival of trains (OSing) and clear the block by direct communication with the train dispatcher, which is work normally performed by the

at times when operators are not on duty. Prior to the introduction of such telephone communication to clear the block and obtain the block, no block system for the protection of train movements was in effect on lines and during the periods operators were not on duty. Specifically, the Hyannis branch was not covered by block rules on the third trick until 1927. In that year the operator at Buzzards Bay was placed in control in the night hours and trains operating in the Hyannis territory have ever since obtained or released the block by telephone. That is what was done in this case.

It follows that here, as in Award 5431, the work claimed has not been diverted from Employees—it is work they have never performed. At least three agreements have been negotiated without request for change.

The claim is, we submit, without schedule basis to support it.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The locale of this dispute is Hyannis, Massachusetts. Claim is made for a "call" on each occasion, when, it is alleged, conductors improperly "O'sed" and cleared Manual block signals via direct communication with train dispatcher, at times which were outside the assigned hours of operators at this point.

The Organization took the position that under the circumstances here present a clear violation of the Scope Rule occurred, since the work involved, being thereunder, obviously belonged exclusively to the craft at times and on occasions when operators are not on duty. The Organization further contended that prior settlements on this property, as well as prior Award 6800 of this Division sustains their position.

The Respondent countered with the assertion that operators were assigned at Hyannis, only on the first and second trick and that there had never been an operator assigned on the third trick at this location. It was further asserted that for a period of time in excess of 25 years conductors had cleared the manually operated blocks and that operators had never been called to perform this service at hours when no operator was on duty. Award 5431 of this Division and the "Greenbush Settlement" were cited as controlling here.

The record indicates that operators are assigned on the first and second trick at Hyannis. The assigned hours of these tricks were 6:20 A. M., to 2:20 P. M., and 2:20 P. M., to 10:20 P. M., Monday through Friday with Saturday and Sunday assigned rest days, however the occupants of these positions performed service on these rest days, on a "call" basis working between 9:00 A. M. to 12 Noon and from 4:00 P. M., to 7:00 P. M.

Involved here is a request for payment of a "call" for alleged violations on some 52 occasions enumerated in the record. We have examined the settlements mentioned by the parties particularly the "Greenbush Settlement" and the Awards cited by the parties, particularly Awards 5431 and 6800 of this Division.

An examination of the facts and circumstances present in Award 6800 reveal distinct differences in those here existent, for which reason it cannot be said to have proper application here.

We are of the further opinion that the basic principal found to be controlling in Award 5431 is applicable here, that is, that on the dates and during the hours indicated, the work involved had never been performed by telegraphers and thus not compensable. Likewise the "Greenbush Settlement" was obviously predicated on the fact that the work here performed occurred during, or within, the regularly assigned hours of week day assign-

ments. There is no evident inconsistency between the findings of the Board in Award 5431 and the "Greenbush Settlement."

When the controlling findings of Award 5431 are applied here it is obvious that of the 52 instances cited at least 4 occurred during or within the regular assigned hours of week day assignments and properly compensable, since work performed by a craft during the regular hours or days of an assignment cannot be performed by one not covered by the agreement when such duties are required on days or hours outside such regular assignments. Therefore, the claims of employee James for January 27, 1954, employee Grasso for December 27, 1953, employee Wentzel for January 3, 1954, and employee Francis for January 10, 1954 are meritorious and compensable.

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 to the extent indicated in the above opinion.

AWARD

Claims sustained to the extent indicated in the above opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of November, 1957.