

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Coast 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 violated the terms of the agreement between the parties when, on August 22, 1954, it unilaterally declared abolished the positions of first, second, and third shift telegrapher-CTC operator at Fullerton, California, without in fact, abolishing the work of such positions;
2. The Carrier further violated the terms of the agreement when, on the same day, acting unilaterally, it transferred work of the three positions named in 1. above, to San Bernardino, Calif., and required and permitted employes not covered by the Telegraphers' Agreement to perform such work;
3. The Carrier further violated the agreement when, on August 29, 1954, it transferred work of the first, second and third shift telegrapher-CTC operator positions at Oceanside, California to San Bernardino, California, and required and permitted employes not covered by the Telegraphers' Agreement to perform such work;
4. The Carrier shall be required to restore such work to the scope of the Telegraphers' Agreement to be performed by employes covered thereby and entitled thereto according to the terms of the agreement, and;
5. Employes wrongfully displaced or adversely affected by the violative actions of the Carrier shall be fully compensated for all loss and expenses sustained as a result thereof; the names and amounts to be determined by a joint check of Carrier's records.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties bearing effective date of June 1, 1951, is in evidence.

On July 7, 1943, the Carrier completed installation of CTC equipment on a portion of its track between Fullerton and Old Town, San Diego, California,

offices. The following is quoted from the "Opinion of Board" in Award No. 4452:

"For the reasons which are presently to follow, we cannot find from the agreements before us that the work of manning CTC machines is exclusively the work of dispatchers or telegraphers. It must be borne in mind that when the Scope Rule of the Telegraphers' Agreement was negotiated, CTC installations were unknown and consequently not contemplated by the signatories to that Agreement. It is clear to this Board that the definition of a towerman or leverman heretofore recited contemplated the handling of signals, switches and mechanical interlocking equipment from a tower under the general direction of a dispatcher by the train order method. By the accepted definition, a towerman or leverman operates interlocked switches and signals from a central point as does the operator of a CTC machine. The definition of a towerman or leverman, however, contains the additional limiting words 'by means of levers', a limitation wholly foreign to a CTC machine which operates automatically without the use of levers. The work of a towerman or leverman is necessarily restricted in the scope of its operation to the vicinity of the tower. A CTC operation is handled from a central point and controls large sections of a railroad line. Its scope of operation is much greater. It is automatically controlled and eliminates the train order method of handling trains. The Telegraphers' Agreement clearly includes the work of towerman and leverman. They naturally belong there because of the necessity for handling train orders in connection with their work. We cannot say that the operation of a CTC machine, which eliminates train order control and consequently one of the most descriptive elements of a telegrapher's work, is included in the scope of the Telegraphers' Agreement because it includes towerman and leverman. Neither do we find anything in this record which indicates that the work belongs exclusively to the Dispatchers. Both the telegraphers and dispatchers have attempted to negotiate more specific scope rules to include the work. The Carrier has refused to negotiate except jointly with the two Organizations."

See also Third Division Awards Nos. 4768 and 4769 which likewise involved claims of The Order of Railroad Telegraphers that employees subject to the Telegraphers' Agreement had exclusive rights and should have been assigned to the operation of CTC machines which were being operated by train dispatchers.

In conclusion, the respondent Carrier respectfully reasserts that the claim of the Employees in the instant dispute is entirely without merit or support under the Telegraphers' Agreement and should, for the reasons previously advanced herein, be either dismissed, remanded or denied in its entirety.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The first installation of any CTC equipment on the Carrier's property was made in 1931. In 1943 the Carrier installed CTC equipment at Fullerton, California, and Oceanside, California. The Carrier states that the latter installations were temporarily made at said points instead of at the Division dispatching headquarters at San Bernardino, California, due to wartime shortage of materials. In any event, the CTC equipment was removed from Fullerton and Oceanside in 1954 and was relocated in the dispatcher office at San Bernardino. Since then the territory which previously had been served by the Fullerton and Oceanside CTC installations has been served by the San Bernardino installation. While said territory is still served by CTC operations, it is obvious that no CTC work remains at Fullerton or Oceanside, for no longer is any CTC equipment located at either point.

At the outset it should be emphasized that nothing in the Telegrapher Agreement restricts the Carrier's right to determine where CTC equipment is to be maintained. Any such restriction would have to be very clearly stated; no restriction on the Carrier's right to move the CTC equipment from Fullerton and Oceanside to San Bernardino is implied from the mere fact that the Carrier and Telegrapher Organization had agreed upon the rate to be paid telegrapher employes for the operation of CTC equipment which the Carrier did decide to install at Fullerton and Oceanside.

As early as 1943 the Carrier stated to the Telegrapher Organization that the Carrier's policy in regard to the operation of CTC machines was:

"The operation of these machines will, as in the past, be assigned to dispatchers when the machine is located in a train dispatcher's office and to telegrapher service employes whenever the Control Machine is located in other than a train dispatcher's office."

The Carrier emphasized this policy statement frequently during the handling of the present case, and asserted that it followed the policy in its actions in the case. Unlike San Bernardino, no dispatcher office is located at either Fullerton or Oceanside. The Carrier assigned the operation of CTC equipment at Fullerton and Oceanside to employes under the Telegrapher Agreement (the Carrier says under the general direction of dispatchers at San Bernardino) as long as any such equipment was maintained at those two points; when the equipment was moved to the dispatcher office at San Bernardino the Carrier assigned the operation thereof to Dispatchers. But the Telegrapher Organization now contends, in essence, that it has jurisdiction over the territory previously serviced by CTC installations at Fullerton and Oceanside; the Organization bases this claim on the fact that it had jurisdiction over the operation of the CTC machines servicing said territory while they were located at Fullerton and Oceanside, and had reached an agreement with the Carrier regarding the rate of pay for operation of the machines at those points. It is obvious, however, that the Dispatcher Organization also has some interest in the operation of the CTC installation that services said territory, for that installation is now located in a dispatcher office at San Bernardino.

From the above considerations it may be stated that: (1) the Carrier had the right to move the CTC equipment to San Bernardino and the Telegrapher Organization has no right to require the Carrier to re-establish the CTC installations at Fullerton and Oceanside; (2) the Telegrapher Organization claims jurisdiction over the operation of the CTC equipment that services the territory involved herein because the Organization had jurisdiction over the Fullerton and Oceanside CTC installations which previously serviced said territory; (3) the Dispatcher Organization also has some interest in jurisdiction over the operation of the CTC equipment since it is now located in the dispatcher office at San Bernardino. This conflict of interest between the Telegraphers and Dispatchers cannot be resolved by any "exclusive" claim or right to "all" CTC work on this property. The following statement in Award 4768 applies with equal force to the present case:

"Patently, the marvel of CTC types of centralized control and electrical operation was not contemplated in assigning the traditional duties to the two crafts. The new task of operating a control board in part unites and in greater part supplants the duties and positions formerly assigned to each. Therefore, the matter of its proper assignment constitutes a jurisdictional dispute, as ably demonstrated by Referee Carter in Award 4452. So we must hold, as held in that Award, that this Board is without jurisdiction to determine the claim."

Nor can said conflict of interest be resolved under the facts of the present case by any clear application or any clear coverage of the above-quoted policy statement of the Carrier. We will not assume to decide here the extent, if at all, that said policy of the Carrier has become an established practice bind-

ing upon the Telegraphers and Dispatchers. But even accepting, without concluding, that it may have adequately satisfied the interests of both the Telegraphers and the Dispatchers up to the time a CTC installation was moved from a telegrapher office to a dispatcher office, said policy does not provide a clear answer where a CTC installation is once established and then moved as in the present case; indeed, said policy does not specifically cover such transfers, if it covers them at all. It seems undeniable that the transfer of the installations in the present case produced or resulted in a reversion to a clear jurisdictional conflict falling within the general jurisdictional conflict situation which, as indicated in Awards 4452 and 4768, cannot be resolved by application of either the Dispatcher Agreement or the Telegrapher Agreement. Also see Award 55 of Special Board of Adjustment No. 117. The transfer of CTC installations in the present case produced a type of jurisdictional dispute situation which is not a proper matter for action by this Board; the case should be remanded for negotiations between the three parties in interest (Dispatchers, Telegraphers, and Carrier) and, in case of failure, the National Mediation Board is the proper forum.

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 the National Railroad Adjustment Board has no jurisdiction over the dispute involved herein.

AWARD

Case remanded in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1957.