

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Illinois Central Railroad, that:

(1) The Carrier violated the provisions of the agreement between the parties when commencing July 21, 1952, at Browns, Illinois, it permitted or required a section foreman, an employee not covered by said agreement, to copy train lineups at a time that the Agent-Operator at this station was not on duty.

(2) The Carrier shall pay the occupant of the Agent-Operator position at Browns a call payment as provided in Rule 11, commencing July 21, 1952, and continuing on each subsequent date and occasion that the violation occurred.

EMPLOYES' STATEMENT OF CLAIM: An agreement dated June 1, 1951, is in effect between the parties, hereinafter referred to as the Telegraphers' Agreement.

Browns, Illinois is a one-man agency station located on the Springfield Division of the Illinois Central Railroad. The position is classified under the Telegraphers' Agreement as Agent-Operator. The occupant of this position is an employee of the Illinois Central Railroad subject to the agreement between the parties, but acts as joint agent for this carrier and the Southern Railway Company, performing all the agent-operator duties at this location for both railroads.

There are both Illinois Central and Southern Railway telephone communication devices at Browns, and it is the recognized duty of the occupant of the Agent-Operator position at this point to perform the communications services for both railroads.

At a time prior to the regular starting time of the position of Agent-Operator, who has the assigned hours of 7:30 A.M. to 4:30 P.M. with one hour for meal, the Carrier required or permitted the section foreman to use the Southern Railway Company train dispatcher's telephone at this location, to copy train lineups by use of the telephone.

The Organization protested and made claim that this work of copying train lineups was work belonging to the occupant of the position of Agent-

AWARD 3450:

"Since the work was removed, not by the Carrier, but by another assuming a superior right to control it, the claim must be denied."

AWARD 4353:

"Now, in this instance the work performed in connection with the Nickel Plate's purchasing operations was being done under agreements between the Carrier and Nickel Plate. It was not work necessary to the operation of Carrier and hence was subject to removal from the scope of the agreement by action of the Nickel Plate at any time, without violation by Carrier of its agreement with its employees."

AWARD 5246:

"But the Scope Rule of a collective bargaining agreement covers only the work thereunder which is or may be undertaken by the Carrier in connection with its operation of its railroad. That is, the Scope Rule of an agreement on one property does not cover like work on another property not under the control of the specific Carrier."

Employees have stated that Third Division Awards 5407, 5408 and 5409 support their position. These were lineup cases from this property. In those cases the section foremen who obtained lineups were Illinois Central employees performing work for the benefit of and under the control of the Illinois Central. The principle in those cases is not applicable here, where this carrier has no control over the work done or the section foreman who did it.

It is the position of the Carrier that it is not a violation of the agreement between the Illinois Central Railroad and Illinois Central System Division No. 11, The Order of Railroad Telegraphers, for a section foreman employed by the Southern Railway, by the use of a telephone located on Southern Railway exclusive right-of-way, to obtain a lineup from a Southern Railway dispatcher as to location of Southern trains on Southern Railway's tracks.

For the reasons above-stated, not only does this Board lack jurisdiction to consider this claim, but it also clearly has no merit and should be denied.

All data in this submission have been presented to the Employees and made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier owns an agency station building at Browns, Illinois, which is located adjacent to the crossing of its line with that of the Southern Railway. Under the terms of a contract between the Carrier and the Southern Railway, the station is used jointly by the two, and the Carrier maintains the station, furnishes utility services and certain supplies, and employs the personnel for transaction of its and the Southern's business. Among these is an Agent-Operator in the Browns station, who is covered by the Agreement between the parties here.

The claim is for call payments for that Agent-Operator for July 21, 1952, and other unspecified dates thereafter, on the ground that the Carrier "permitted or required" a section foreman in the exclusive employ of the Southern Railway to copy a line-up issued by a Southern Railway dispatcher covering Southern trains, in doing which he used a telephone on a pole located on the Southern's exclusive right-of-way some 400 feet distant from the station at Browns.

It is difficult to understand how the Carrier could have "required" someone not its employe to do anything, especially a task performed off the Carrier's property, but in any event there is no proof that the Carrier required it. It is equally difficult to see how the Carrier could have "permitted" something over which it had no control.

If the Organization has any valid claim here, it is against the Southern Railway for violation of another Agreement. Certainly this Carrier violated no provision of its Agreement with the Organization.

For these reasons the claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 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 10th day of March, 1958.