

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, 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 agreement between the parties when on August 15, 1953, it permitted or required an employe outside the scope of said agreement to act as a telephone block operator at Franklin, Mass., to obtain permission for a train to occupy and use main track within a designated block limit territory.
2. The Carrier shall now compensate Operator-Clerk J. F. Smith, Franklin, Mass., for a call—two (2) hours at time and one half rate for work of which he was deprived by the Carrier's violative action.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties bearing effective date of June 17, 1947, covering wages and working conditions, hereafter referred to as the Telegraphers' Agreement. Included in the wage scale of the said agreement is a position at Franklin, Mass., designated Clerk Operator, with assigned hours 5:00 a.m. to 1:00 p.m. The hourly rate shown in the wage scale for this position is \$1.486, since adjusted in accordance with national agreements. The rest days of this position are Saturday and Sunday. However, the incumbent of the position is regularly required to perform service on Saturdays from 7:30 a.m., to 9:30 a.m., for which he is compensated on a "call basis—two (2) hours at time and one-half rate.

On Saturday, August 15, 1953 at a time when the Operator-Clerk J. F. Smith was not on duty, but subject to call, the Carrier permitted or required the Conductor of Freight Extra 0507 East to perform block operator service at Franklin, Mass.

Operator Smith had performed service from 7:30 a.m., until 9:30 a.m., on the morning of August 15, 1953, after which he was released. Although it was known that Train 0507 East would be operated and would arrive at

"* * * hold that where the work to be performed by the particular craft in question is not described or spelled out in the Scope Rule or elsewhere in the agreement specifically reserved, and the question for decision is whether the work involved was ever within the purview of the contract, there is such ambiguity in its terms that intention of the parties, to be determined by recourse to custom, tradition, practice and other indicia of their understanding, is the decisive factor in determining whether the Scope Rule covers all work ordinarily performed by the classes of employees listed therein or was intended to leave to other employees that which they had been performing prior to the negotiation of the agreement."

Similarly in the case covered by Award 5416 the telegraphers claimed the exclusive right to operate an interlocking although the record showed train crews had performed the work for many years. Again the opinion resorts to findings as to custom and practice, as indicating the jurisdiction of the positions listed in the Scope Rule, and based upon that finding denied the claim.

These precedents are authority that the operating practices of many years' standing challenged in this proceeding evidence that the work is not reserved exclusively to Employees.

Accordingly, Carrier submits this claim should be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier here concerned states as its position the following:

"Assuming, without conceding, that Claimant had a demand right to a call for this work, the fact situation presents a case in which he could not have made himself available within the requisite time. He resided in Dorchester in the metropolitan Boston area with all that that implies as to congested and difficult traffic conditions. He could not have reached Franklin by public means of transportation, except after long delays. In his own automobile the situation would not have permitted arrival in order to avoid delays to trains which was the purpose of the telephone calls.

"It follows the claim in this dispute must fail because the operator named on whose behalf the case is presented was not, and could not have made himself, available for the work in question."

Such argument might have some weight here if Carrier had attempted to call Claimant to handle this work. Its observations now are of no moment, Awards 4200 and 4841.

We have, then, to determine if Claimant "had a demand right to a call for this work."

Carrier also states:

"The operating practice basic to the claim in this case is of long standing. It was urged by Employees in the dispute submitted to this division and which resulted in Award 5431."

That same Award by Referee Jay S. Parker, was also cited by the Organization as supporting its position. It concerns the same parties as here.

Prior to March 28, 1948 this Carrier had maintained two Operator-Clerk positions covering service from 5:30 a.m. to 9:30 p.m. Carrier then abolished one of the positions and assigned the remaining position to a schedule of 11:00 a.m., to 8:00 p.m.

Carrier's action, Award 5431 noted, left work to be performed at that point between the hours of 5:30 a.m., and 11:00 a.m., the hour the newly designated single shift began, and from 8:00 p.m., when the new shift ended, to 9:30 p.m.

"which the occupant of the newly created position was entitled to perform on the call basis, if and when it was required, under Article Seven of the then, and the now, current agreements."

An Award, strongly relied on by the Organization, is 6800, (Robertson) involving these same parties, a portion of which reads:

"* * * On this property, however, it is clearly recognized by the Carrier that where a conductor clears a block at a recognized block station outside the hours of duty of the assigned man (except in an emergency) the assigned operator is entitled to a call."

No emergency has been proven here.

The claim here before us covers an incident which occurred on the rest day (Saturday) of Claimant. It is argued on behalf of the Organization that its claim "must be sustained because the work was done within the regular week day hours of the Claimant, as contemplated by Article 6-A of the Agreement; also because it occurred at a time of day when a telegrapher was formerly employed and on duty (prior to the 40 hour week)."

There is an additional point worth consideration here: For reasons which must have been compelling, Carrier had been calling Claimant to work on Saturdays from 7:30 a.m., to 9:30 a.m., on a call basis.

Clearly if he was entitled to be called to work on a call basis on Saturday, he was equally entitled to be called "to act as a telephone block operator" on Saturday, August 15, 1953.

A sustaining Award is, for the reasons here set forth, in order.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1958.