

Award No. 10059
Docket No. TE-8602

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway that:

1. When Edgeton Tower at Raleigh, North Carolina was closed effective 11:59 P. M., Monday, January 29, 1952, all of the work of the three (3) around-the-clock operator-levermen positions was not abolished in fact, but remaining work was turned over to employes not under the coverage of the Telegraphers' Agreement; and that

2. Edgeton Tower be restored and all employes improperly removed shall be restored to their regular positions and all employes adversely affected be compensated any and all loss in earnings as well as expenses incurred by reason of this improper abolishment.

EMPLOYEES' STATEMENT OF FACTS: The current agreement between the parties, effective August 1, 1937, lists in Article 32 the positions here in dispute:

Edgeton Tower, 1st	O-L	\$0.72
Edgeton Tower, 2nd	O-L	0.70
Edgeton Tower, 3rd	O-L	0.70

The hourly rates of pay shown have, since 1937, been adjusted upward on several occasions. The tower was constructed some 45 years or so ago. The positions were negotiated into the Telegraphers' Agreement of July 1, 1921 and have been in each agreement since that time.

The following letter and bulletin was received by the occupants of the positions at Edgeton:

"Raleigh, N. C., Jan. 25, 1952 pm
17-144

switches in connection with the movement of their own train is not outside of their assigned duties. The use of the telephone in the circumstances of the case is necessary and incidental to the performance of these duties. Award 9228."

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SUMMARIZING: Edgeton Interlocker is located at the north end of carrier's Glenwood Yard, the terminal for freight trains at Raleigh; it is a point where tracks of the respondent and the Seaboard Air Line intersect at grade level. Since the installation of the automatic interlocker and abolishment of the operator-levermen positions, all of the residual work of those positions coming within the scope of the telegraphers' agreement was assigned to and continues to be performed by operator-clerks under the agreement, employed at Glenwood Yard Office, 0.7 miles south of the interlocking plant. Carrier submits that the operation of this automatic plant is practically identical to the plant operation involved in Award 1008, supra, and that none of the functions involved in the operation of this plant is work which contractually, traditionally, or historically belongs exclusively to employees of the telegraphers' class.

All of the data contained herein has been discussed with the employee representatives, either in person or by correspondence, and/or is known and available to them.

For the reasons hereinabove stated the respondent carrier submits that the claim is without either merit or contractual basis; that the change in method of train operation through this interlocking plant at Edgeton did not and does not constitute any violation of the petitioners' agreement; that the work coming within the petitioners' agreement formerly assigned to and performed by the operator-levermen whose positions were abolished is assigned to and is being performed by operator-clerks coming within the coverage of that agreement. We, therefore, hold that the claim should be denied, and urge that your honorable board so hold.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 29, 1952, Edgeton Tower, a mechanically operated interlocking facility and an installation built 45 years ago, located at Raleigh, North Carolina, was replaced by a semi-automatic interlocking plant, which went into operation on January 28, 1952 at 7:00 A. M.

The jobs of the three full time Operator-levermen assigned to Edgeton Tower were abolished effective midnight January 28, 1952, and their job duties were reportedly assigned to employees not members of The Order of Railroad Telegraphers.

The five questions that must be answered and resolved in this case are as follows:

1. Is the claim properly before the Board because of the "extremely excessive delay in progressing the claim to this Division?"
2. Is the claim properly before the Board because of the Organization's failure to name all persons involved in the complaint?

3. (a) Was all the work of the three operator levermen at Edgeton Tower abolished when that station was closed on January 29, 1952?

(b) Is it the regular function of conductors, brakemen and switchmen to protect their own train movements by performing job duties incidental thereto — or do the members of O. R. T. have the exclusive right to do such work?
4. Should the Edgeton Tower operator levermen be restored to their regular positions "and all employes adversely affected be compensated (sic) any and all loss in earnings as well as expenses incurred by reason of this improper abolishment?"

The Board could properly dispose of the first two questions by stating that those questions were not raised on the property, therefore, they are not properly before the Board. However, the Board is disinclined to dispose of those questions in that manner and will, accordingly, answer and resolve each question.

For the answer to the first questions let us turn to the Railway Labor Act. The Act's objective is the prompt and orderly settlement of disputes. That objective will be totally defeated unless disputes are processed and settled with celerity and dispatch.

In this case, the delay of three and a quarter years before progressing the claim from the property to this Board is certainly excessive and not in keeping with the objective of the Railway Labor Act and the Board would have so ruled had the Carrier refused to recognize the claim on that basis. However, the Carrier's action in recognizing the Organization's belated action forced the Board to concede that the claim is properly before it.

In answer to the second question — the Board maintains that when the claimants can be readily identified, it is not a factual defect or a procedural flaw to omit the claimants' names. See Awards 4821, 5107, 5436, 5630 and 8506. On this particular case, the group involved is small and readily identifiable. Consequently, in answer to this question, the Board must rule that the Claim is properly before it.

Before attempting to answer the third question — it is first necessary to establish that the Carrier has the right to abolish jobs under the Agreement. Article 22 (c) gives the Carrier that right provided it is done in accordance with contractual provisions.

In answering question 3 (a) it is necessary to know the job duties of operator-levermen. The record indicates that operator-levermen handle train orders, messages, reports and clearance cards; perform telegraphic duties; and operate and control the movements of train by a series of tower levers or switches.

When Edgeton Tower was closed the telegraphic and clerical duties, previously performed at that location, were transferred to the operators at Glenwood Yard Office — some seven tenths of a mile away.

The duties of train crews, conductors, brakemen and switchmen, after the closing of Edgeton Tower involved the pushing of buttons or electric hand switches and some telephone contact work. It is to be noted that the

work performed by the train crews is performed solely for the movement of their own trains. In Award 8660, Referee Guthrie stated "This type of case has been before the Division on many occasions. It should be pointed out that the switches here involved have never been operated by telegraphers."

The electrically operated hand switches or buttons used by the train crews are not switches or levers that are operated from a tower by a lever. In turning to the Scope Rule of the present Agreement, the Board failed to find any supportive data whatsoever to indicate that those duties — now performed by train crews — are the sole and exclusive duties and responsibilities of the operator-levermen. Furthermore, there was no proof that the operator-levermen ever operated the electric hand switches in question. See Awards 1008, 4375, 6313, and 6973.

Accordingly, the Board finds that the work of the Edgeton Tower operator-levermen was, in fact, abolished and that the operator-levermen do not have exclusive right to the work now performed by train crews in providing movement for their own trains. The use of a telephone is necessary to the proper performance of those duties. In First Division Award 16811 — the Referee stated "The change in equipment eliminated the need for an interlocking plant operator. The requirement that the train crew throw switches in connection with the movement of their own trains is not outside of their duties. The use of the telephone in the circumstances of the case is necessary and incidental to the performance of these duties." See First Division Award 9228. Also, there was no evidence offered to support the position of the Organization that telegraphers have an exclusive right to use telephones. See Award 9961.

Referee Mills in Award 1008 — stated "Every automatic operation requires human thought and action to release it. The train or yardman who unlocked the switch to invoke the power for the automatic operation of the signals and switches at the crossing was, in fact, no more a 'towerman' or 'leverman' than the engineer would have been had the power been invoked by the engineer when he opened the throttle or pulled a lever to move the engine to point where contact between the flange or some other part of the wheel and the rail would complete a circuit and bring about the automatic change of signals and switches."

From the answers to the previous questions, it would seem that the final question has already been answered. However, to avoid any misunderstanding the Board rules that the former Edgeton Tower Operator-levermen should not be restored to their regular positions nor shall all employees adversely affected by their removal be given any compensation or expenses.

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

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September, 1961.