

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Louisville and Nashville Railroad, that:

1. The Carrier violated and continues to violate the Agreement between the parties when it unilaterally abolished the positions of Operator-Leverman at "SW" Tower, Strawberry, Kentucky, without in fact abolishing the work thereof; and requires or permits employes holding no rights under said Agreement to operate switches and signals at "SW" Tower by means of remote control from Louisville, Kentucky.

2. The Carrier violated and continues to violate the Agreement between the parties when it requires or permits employes outside of said Agreement at Strawberry Yard, Louisville, Kentucky, to perform the work of a Block-Operator by reporting (OS'ing) trains, blocking trains and copying train line-ups.

3. That the work set forth in item one be restored to employes under the Telegraphers' Agreement, and that

4. The Carrier be required to pay each of three senior idle employes, extra in preference, for the work set forth in item one, eight (8) hours for each and every day commencing January 30, 1956 at the agreed to rate (pro rata on days other than rest days or holidays), of the abolished positions, and thereafter so long as the violation continues.

5. The Carrier be required to pay the senior idle telegrapher, extra in preference, eight (8) hours at the appropriate rate, for the work in item two, for each instance when an employe outside of the Agreement at Strawberry Yard, Louisville, Kentucky, performed the work of a Block-Operator in the manner described. The dates and instances of violation to be secured by a joint check of Carrier's records.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective April 1, 1945, as revised.

All matters referred to herein have been presented, in substance, by the carrier to representatives of the employees, either in conference or correspondence.

OPINION OF BOARD: This is a claim, like a number before it, protesting the abolition of operator-levermen jobs at an interlocking plant and the transfer of the resulting work to dispatchers operating under Centralized Traffic Control at a different location.

The petition of the Organization that the work be restored to employees under the Telegraphers' Agreement and for certain damages for loss of opportunity to do the work has been denied in a series of awards involving the same issue. **Awards** 4452 (Carter); 4768 (Stone); 8544 (McCoy); 8660 (Guthrie); and 10303 (Mitchell). The one sustaining award cited by the Organization is distinguishable on the facts. **Award** 8773 (McMahon).

The substantial precedent established by the awards denying the claim seems to foreclose the need for further consideration of the question in dispute. The essence of this line of authority is that where the Telegraphers' Agreement does not specifically provide for the operation of CTC equipment the telegraphers do not have an exclusive right to operate the signals and switches previously handled by operator-levermen. Under this finding the Carrier is free to contract with the dispatchers to perform the work.

Despite the precedent established, the Employees ask that the question be reviewed because, in their opinion, the initial decision on the point, **Award** 4452, which was followed by all other awards denying their claims, was wrongly conceived. There is some merit to this.

In **Award** 4452, it was held that the levermen did not have the exclusive right to operate the CTC board because this was new work not contemplated when the Scope Rule was negotiated.

Because of its precedent setting effect the pertinent parts of that award follow:

"It is evident from a reading of the foregoing Scope Rule that work incident to the operation of a CTC installation is not specifically mentioned. The Organization contends that the definition of the word 'leverman' and 'towerman' as used in the industry, includes those charged with the operation of CTC machines.

* * *

" * * * 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 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 towermen and levermen. * * *

The detail with which the technical differences are explained between operations at interlocking plants and at the CTC board suggests that difficulty was experienced in meeting the Employees' contention that they should follow the work because the net result of the electronic changes was to gather together the levers into one location so that they could be operated by one man rather than several. In the view of the Employees, when electricity came into general use it was substituted in many instances for the direct connection between levers and switches and/or signals. This did not change the character of the work. It merely provided the means of extending the territory in which a single "leverman" could be effective.

It will be recalled that the telephone, which has had even more impact on the Scope Rule than CTC, has not been construed to be a new machine "not contemplated when the Scope Rule was negotiated." Although there are sharp differences of view on the point, there is very respectable authority to the effect that where the telephone is used as a substitute for telegraph to communicate messages of record the work will be considered to be reserved exclusively to telegraphers under their Scope Rule Agreement.

In finding that the setting of switches and signals under CTC was not an extension of duties performed previously by operator-levermen, but was instead new work, the decision in Award 4452 set a sweeping precedent for the introduction of all new electronic or automatic devices. The effect of that award, which has already become a trail-blazer on the matter of the introduction of technological improvements, is that existing scope of work agreements, in any craft, may not be considered to include the same work performed with different machines.

No doubt, the majority in Award 4452 did not intend to give this broad new meaning to scope agreements. It specifically noted that the problem was a dispute of long standing and jurisdictional in nature. Accordingly, the dispute was "remanded for negotiation between the Carrier, the Telegraphers and the Dispatchers and, in case of failure, the National Mediation Board and not this Board." The reason given for this action was that "There must be an agreement with reference to the work before this Board has jurisdiction to act, this Board being solely an interpreting agency under the law creating it."

The specific finding in Award 4452 was "That the National Railroad Adjustment Board is without jurisdiction to hear the dispute." Accordingly, the views in the opinion with respect to the effect of new machines on work content were not intended to set precedent. But this is what happened.

In Award 4768, decided soon after Award 4452, the dispute similarly was remanded for want of jurisdiction, but the idea that new machines change the character of the work was advanced in the opinion that:

"Patently, the marvel of CTC types of centralized control and electrical operation was not contemplated in assigning the traditional

duties to the two crafts (telegraphers and dispatchers). The new task of operating a central board in part unites and in greater part supplants the duties and positions formerly assigned to each."

Later decisions denied the claims rather than remand them, thus overruling the earlier view that the Board had no jurisdiction to hear the claim. The basis for such denial, however, was the opinion in the earlier cases about the effect of the introduction of new technology. Thus, in Award 8544 for example, it was held that:

"Since, under the authority of Awards Nos. 4452 and 4768, the work is not exclusively that of the Telegraphers under their Scope Rule, the contract with the Dispatchers is valid and does not violate the Agreement with the Telegraphers. The claim will therefore be denied."

Summing up the precedent relied on by the Carrier here and challenged by the Employees, it is apparent that the majority in the landmark case (4452) found the Board had no jurisdiction to entertain the claim because it was in an unsettled area, which could be resolved only by negotiation by the parties; and that the gratuitous opinions on the impact of new technology were adopted as substantive findings in subsequent decisions.

We do not follow this precedent, as it has developed, in the claim presently before us. We do agree with the basic finding in Award 4452 stated above that "There must be an agreement with reference to the work before this Board has jurisdiction to act, this Board being solely an interpreting agency under the law creating it * * * the National Mediation Board and not this Board constitutes the proper forum for its final settlement."

We do not adopt (or reject) the opinions in this and subsequent decisions that signal and switch work under CTC is new and therefore not reserved exclusively to employees under the Telegraphers' Agreement. We just don't know the answer to this question.

It would do more harm than good to speculate on what the scope of work was intended by the parties to be when revolutionary changes in operations were occasioned by the introduction of Centralized Traffic Control. It would be even worse for this Board to write new rules, in effect, through the decisional process. The attempt of the Board to give definition to the work intended when the telephone was introduced is good evidence of the inability of this Board to decide fundamental problems in labor-management relations. But this should come as no surprise. This Board was established to handle grievances and to interpret agreements. It is a Board of "Adjustment."

Since the Employees have not presented an agreement capable of interpretation under the facts involved here, this Board is without jurisdiction to settle the dispute.

Accordingly the claim is dismissed.

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 is without jurisdiction to hear the dispute.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of *THIRD DIVISION*

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August 1962.