

**Award No. 10754**

**Docket No. TE-9675**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Raymond E. McGrath, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**RUTLAND RAILWAY CORPORATION**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Rutland Railway:

1. That the Carrier violated the terms of the prevailing agreement between the parties when, on August 4, 11, 18 and 19, 1956, a train conductor, an employe not subject to the terms of the agreement, performed service covered by Article I (Scope) of the agreement at Malone, N. Y., at a time when the incumbent of the position of operator-clerk at Malone was off duty, but available.

2. That the Carrier further violated the terms of the agreement when, on August 18 and 19, 1956, clerical employes, not subject to the terms of the agreement between the parties were required or permitted to perform communication service covered by the Scope Rule (Article I) of said agreement at Malone, N. Y., at a time when the operator-clerk was off duty, but available.

3. Mr. M. C. Maneely, incumbent of the position of operator-clerk, Malone, N. Y., shall be compensated in accordance with the terms of Article VIII of the prevailing agreement between the parties, because he was not called to perform service to which entitled, while off duty, but available.

**EMPLOYES' STATEMENT OF FACTS:** An agreement bearing effective date of February 15, 1944, covering rules of working conditions and rates of pay is in effect between the parties to this dispute. Copies of this agreement are presumed to be on file with your Board.

Malone, N. Y., is a station located on Carrier's single track line known as the "Ogdensburg Sub-Division." For many years Malone was operated as a twenty-four hour per day open communicating office with three telegrapher positions on an eight-hour basis for each position. The third, and later the

lation of this rule." (Emphasis ours.) This is precisely what the conductor of AM-1 did in these instances.

The Organization has contended on the property that the Note appearing under Article XIV means the operator at the point where the train leaves the main track and clears the block, but the Note does not so read, and we must be governed by the wording of the Agreement. It is perfectly logical, and practical railroading, that under the Manual Block rules the conductor should clear the block to the operator at the last open station where the train entered the block.

It is quite possible that a train might clear the block at a siding between stations. The Railway would not be required nor expected under the Agreement to put an Operator at each intermediate siding merely to convey word that a train had cleared the block at that point.

The claims for a call on August 4, 11 and 18, 1956, because conductor of AM-1 used the wayside block line circuit telephone at Malone to clear the block should be denied as they are entirely without merit.

The claim for August 19 is completely erroneous and has no basis, as there was no train on the railroad on that date such as Clerk-Operator Maneely specified in his original claim; namely, Train AM-1, Conductor Stone, Extra 404 North. Train AM-1 is not scheduled to run on Sundays.

2. The second claim involves the question as to whether it is improper for the operator at Malone Jct. to handle messages to and from Malone over the facilities of a commercial telephone company within the same corporate limits. We cannot agree with the Telegraphers' Organization's contention that the Scope Rule precludes the use of the commercial telephone by anyone other than a member of their organization. The Scope Rule merely lists those employees who are covered by the Agreement. On the 18th, the System office at Rutland transmitted a message to Malone Jct. concerning a carload of sheep and the Clerk-Operator at Malone Jct. called the station at Malone on the commercial phone. The Yard Clerk on duty answered the phone and took the message, which is one of his assigned duties. Answering the commercial phone at a freight office is not exclusively the work of a Clerk-Operator. To concede to the theory being advocated by the Order of Railroad Telegraphers in this case would lead to a ridiculous and ludicrous situation.

The same principle is involved in the incident on the 19th of August. A conductor was relieved at Malone. Information to this effect was transmitted by commercial phone from the Yard Clerk at Malone to the Operator at Malone Jct., one mile away, who in turn relayed the message by use of railroad facilities to Alburgh, Vt.

It is the Carrier's position that the use of commercial telephones to relay information to or from an open station from which it is transmitted over railroad communication facilities is not a violation of the Telegraphers' Agreement, as the actual transmitting of such messages over railroad communication facilities is being handled by employees within the Telegraphers' Craft.

These claims should be denied.

**OPINION OF BOARD:** In this dispute the Union alleges Carrier violated the agreement in requiring or permitting train services and clerical employees at Malone to perform certain work. It is further contended that

the incumbent of position of operator-clerk at Malone should be paid a "call" for each occurrence. At the time this claim arose there was one position at Malone, with classification of operator-clerk. The assigned hours were from 6:30 A. M. to 3:30 P. M. with one hour for lunch, daily Monday through Friday. Assigned rest days were Saturday and Sunday. Claimant, M. C. Maneely, was the regular assigned employee.

Prior to April 25, 1948, three shifts were maintained at Malone. On this date the third shift was discontinued. On March 12, 1951 the second shift was discontinued. After this date only one shift was maintained.

At a point where New York Central tracks cross those of Carrier, 1.3 miles distant from Carrier's station in Malone, a tower known as Malone Junction is maintained. Prior to about September 24, 1950, three shifts were maintained at this tower providing round-the-clock service. On or about this date the third shift was abolished. The employees operating this tower are New York Central employees. At the time this claim arose two shifts were maintained.

It is the contention of the Union that use of the telephone by train conductors on dates involved, in clearing his train with operator on duty at Malone Junction and use of commercial telephone in station at Malone by a clerical employee to transmit in one instance a message to operator on duty at Malone Junction and in another to receive message from the operator, as shown in the record, violated the Scope Rule of the Agreement. Carrier, on the other hand, vigorously contends that Malone Junction, even though operated by another railroad is a station on its line of railway and that employees at the tower have for fifty years handled train orders and other communications at Malone.

In view of the peculiar circumstances here existing, it is first necessary to review the record.

In letter of August 31, 1956, in response to claim filed by Mr. Maneely (not shown in record), Superintendent Lovett stated:

"Inasmuch as the New York Central R.R. employees in Telegraph Service at Malone Jct., N. Y; a station on the Rutland Railway and shown as a Train Order and Telegraph Office in Employees' Time table No. 1, effective January 20, 1901, and each subsequent issue up to and including Supplement No. 1 to current time table No. 129, effective April 29, 1956, have, in the discharge of their duties for more than fifty years handled Rutland R.R. business, such as Train Orders and other communications — and, since the adoption of Manual Block System have performed the duties of Signalman, all without protest from, or any exceptions taken thereto by, the Telegraphers' Organization, there is no justifiable reason at this time to feel there is any basis for claims in continuing this practice of long standing."

We do not understand the Superintendent to be denying work coverage, under the Agreement, he was simply stating, as a fact, that Malone Junction was a Rutland facility for the handling of train orders, communications and blocking trains. In our opinion, the reference in letter of the General Chairman on appeal to Vice President, dated September 24, 1956, reading:

"Regardless of the reference to Malone Junction made by Mr. Lovett in denying the claim, this is a location separate and apart

from Malone Junction. The work in question has not been done by non-operators at Malone for a long period of time and has not been done at Malone by the operator at Malone Junction for any extensive time. A position of operator was maintained at this point until 1951."

does not meet the issue. The Vice President responded, October 26, 1956, and asserted that Malone Junction was within city limits of Malone. He also contended that the "note" to Article XIV permitted the conductor to clear his train with operator at Malone Junction. Further the letter raised the issue that use of the commercial telephone by the clerical employee to communicate with operator at Malone Junction was not prohibited by the Agreement. In response the General Chairman replied, December 12, 1956:

"We regret that we cannot agree with statements that work covered by the telegraphers' agreement can be assumed by employees outside the coverage of the agreement through the use of commercial telephones. The term 'outside telephone' in Article XIV of the telegraphers' agreement refers to Carrier telephones at stations and siding and does not give your management the right to transfer work of our agreement to clerical forces or train employees using commercial telephones.

"It is our position that Malone, N. Y. station of the Rutland is the block and train order station, as it always has been, and not the Malone Junction station of the New York Central. For many years, the service for which we are making claim has been performed at Malone and is part of the duties of that position. For that reason Mr. Maneely should have been called to perform same on the dates of the claim."

Thus, the issue developed in the handling on the property was whether Malone Junction operators were, for the purpose of blocking Rutland trains and handling Rutland communications to be treated as Rutland employees. No evidence was offered by Union to show that the employee or employees at Malone, covered by the agreement here involved, had exclusively handled such work. No evidence was offered to show that any Rutland telegrapher had ever been called outside his regular assigned hours or on a rest day to perform similar work. The burden was upon the Union to show facts, from which this Board would draw reasonable inferences that would support its contention as to work opportunity at Malone. Absent such showing we can only conclude that Carrier's assertions, as shown in the handling on the property are correct.

The Union did not meet the burden of showing that blocking of trains and handling of messages as shown in the instant case, at Malone, was work exclusively reserved to the incumbent of clerk-operator position at Malone. 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 oral hearing;

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1962.