

Award No. 10823

Docket No. TE-9493

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip C. Sheridan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK AND WESTERN RAILWAY COMPANY

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

Carrier violates the agreement between the parties when it requires or permits employes not covered by the agreement to perform the work of telephone operator at a station where an operator is employed but not on duty.

1. (a) At Kinney, Virginia, from October 19, 1955 to November 4, 1955 (both inclusive) conductors and yardmasters OSing (reporting) train arrival times to train dispatcher and reporting clear of the block to next block station.

(b) Carrier be required to compensate M. C. Neighbours, Operator-Clerk at Kinney, a minimum call for each violation.

2. (a) At Kinney, Virginia, on November 5, 1955 and each day thereafter conductors and yardmasters OSing (reporting) train arrival times and reporting clear of the block to the operator at Lynchburg, Virginia.

(b) Carrier be required to compensate T. D. Carter, Operator-Clerk at Kinney, a minimum call for each violation commencing November 5, 1955 and continuing each day thereafter until the violation is corrected.

3. (a) At Kinney, Virginia from February 4, 1956 to April 1, 1956 (both inclusive) a yardmaster and/or clerk copied consists from 15th Street Yard Roanoke, Virginia.

(b) Carrier be required to compensate T. D. Carter, Operator-Clerk at Kinney, a minimum call for each violation.

4. (a) At Kinney, Virginia on April 2, 1956 and each day thereafter a yardmaster and/or clerk copies consists, messages and reports from Lynchburg, Virginia.

(b) Carrier be required to compensate T. D. Carter, Operator-Clerk at Kinney, a minimum call for each violation commencing April 2, 1956 and continuing thereafter until the violation is corrected.

5. (a) At Kinney, Virginia on January 27, 1956 Signal Foreman Trump transmitted a message to the operator at Lynchburg, Virginia.

(b) Carrier be required to compensate T. D. Carter, Operator-Clerk at Kinney, a *minimum* call.

6. (a) At Kinney, Virginia, on February 5, 1956 Assistant Yardmaster Ramsey transmitted a message to the operator at Lynchburg, Virginia.

(b) Carrier be required to compensate T. D. Carter, Operator-Clerk at Kinney, a minimum call.

EMPLOYES' STATEMENT OF FACTS:

GENERAL

The agreements between the parties to this dispute are available to your Board and by this reference are made a part hereof.

The claims listed above have arisen because of violations by the Carrier of an agreement made pursuant to the provisions of the Railway Labor Act on a class and craft basis.

Employees rely primarily on Article 1 of that Agreement which sets forth the classes covered. This article reads:

Article No. 1

"Employees required to perform telegraph service of any character or duration, Telephone Operators (except switch-board operators), Agents listed herein, Agent Telegraphers, Agent Telephoners, Towermen, Levermen and other employees included in this schedule of rates will be considered Telegraphers within the meaning of this agreement, irrespective of title by which designated or character of service performed.

NOTE — The term 'Towermen' is synonymous with 'Levermen' and both are required to operate interlocked switches and/or signals by means of levers from a central point."

Kinney, Virginia is a station near the southern boundary of the city of Lynchburg and is essentially the control center of the Carrier's yard operations at that point. For forty years or more the Carrier maintained a 'round-the-clock communication office at Kinney but due to some changes in operation about fifteen years ago the three telegraphers' positions there were abolished. In October, 1955 the Carrier made another change in operations, moving practically all of its yard operations from Island yard (Lynchburg) to Kinney but instead of providing continuous communication service it established only one position of Operator-Clerk

Denial of all claims in the instant case is respectfully requested.

All material used in this submission was presented to or was known by the Employees while this claim was being progressed on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Six claims are presented by the Organization alleging that persons outside their craft were transmitting messages reserved to them by their Scope Rule. These messages originated by phone from Kinney, Virginia.

The pertinent parts of the Scope Rule involved are as follows:

"Article No. 1

"Employees required to perform telegraph service of any character or duration, Telephone Operators (except switchboard operators), Agents listed herein, Agent Telegraphers, Agent Telephoners, Towermen, Levermen, Levermen and other employees included in this schedule of rates will be considered Telegraphers within the meaning of this agreement, irrespective of title by which designated or character of service performed.

"NOTE — The term 'Towermen' is synonymous with 'Levermen' and both are required to operate interlocked switches and/or signals by means of levers from a central point."

It will be noted that this Scope Rule does not illustrate the work to be performed by the Organization.

The origin of these messages is Kinney, Virginia, the southern boundry of Lynchburg, and is the control center for Carrier at that point. In October, 1955, the Carrier abolished continuous service for operators, and provided only one operator position with assigned hours from 11:30 P. M. to 7:30 A. M., seven days a week, assigned rest days, Saturday and Sunday.

Lynchburg is situated on the old main line between Norfolk and Roanoke, this line is utilized by passenger trains. Kinney is situated on the Belt Line or cut-off between Forest and Phoebe, and the freight trains utilize this track. Kinney is also the north and terminal station of the main line from Durham, N. C.

Claim No. 1 arises because the conductor or yardmaster when the operator is off duty at Kinney, reports to the dispatcher the time of arrival of a train together with the time off duty, and further reported to the block operator the train had cleared the block at a certain time.

Claim No. 2 is similar to Claim No. 1, except the Carrier gave instructions that the conductors were to report to the operator at "X" Tower instead of dispatcher at Crewe if Kinney operator is not on duty.

Are the acts mentioned in Claims No. 1 and 2 work reserved to the Organization.

In an effort to answer this question we read approximately one hundred and twenty-five (125) past awards. These awards were submitted by the respective parties herein.

We have concluded from reading these awards that the OS'ing of trains are communications of record. See Award 4458.

The Scope Rule in question involving this Carrier was before this Board in Award 4791. Both of the parties herein have cited this award in support of their respective positions.

We note from reading Award 4791 that the receiving and transmitting of messages of record was work generally reserved to the telegraphers under their Agreement. The messages expressed in Claims No. 1 and No. 2 concerned the operation of trains; and the work outlined in Claim No. 2 was work belonging to the operator at Kinney station.

From the foregoing, Award No. 4791, Award No. 10525, we must find that claims No. 3, 4, 5 and 6 did not violate the Agreement, the messages set forth in those claims were messages concerning information that was being submitted by the parties concerned and did not concern the operation of trains or the safety of persons and property.

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 Employee involved in this dispute are respectively Carrier and Employee 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 with respect to Claims No 1 and 2; there was no further violation of the Agreement.

AWARD

Claims 1 and 2 sustained. Claims 3, 4, 5 and 6 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1962.

Serial No. 207

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Interpretation No. 1 to Award No. 10823

Docket No. TE-9493

Name of Organization:

THE ORDER OF RAILROAD TELEGRAPHERS

Name of Carrier:

NORFOLK AND WESTERN RAILWAY COMPANY

Upon application of the representatives of the employees involved in the above Award that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

The Organization requests an interpretation of the Award sustaining Claims 1 and 2.

Our interpretation of the Award will be determined solely on the record as presented to this Referee prior to the adoption of the Award by this Board.

It is difficult due to the passage of time to recall the oral arguments submitted by the respective parties, but a review of the Record presented to this Board prior to the adoption of the ultimate Award reveals these expressions concerning the Organization's position:

"When employees not covered by the agreement are required or permitted to perform telegrapher's work at a station at a time when the operator is off duty, the operator is deprived of the compensation due him under this rule because of not having been called to perform the work which is rightfully his. The claims are for the purpose of compensating the claimants in the amount which they lost due to breach of contract by the Carrier."

Further the Organization sets forth their position concerning Claim No. 2 as follows:

"This Claim No. 2 is essentially a continuation of Claim No. 1 as the violation stems from employees outside the agreement OSing and blocking trains."

We were guided by the foregoing theory of the issue involved in our final determination.

It is our interpretation that the Award granted to the Claimants herein was limited to the designated named Claimants as long as they were working at Kinney.

Referee Phillip G. Sheridan, who sat with the Division as a neutral member when Award No. 10823 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 30th day of July 1964.