

Award No. 11288
Docket No. TE-9457

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY AND
THE LAKE ERIE & EASTERN RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pittsburgh and Lake Erie Railroad (The Lake Erie and Eastern Railroad), that:

1. Carrier violated Agreement between the parties when on July 10, 11 and 17, 1956, it required or permitted Signalman C. H. Fields, an employee not covered by Telegraphers' Agreement, to perform duties of Operator at "PO" Tower.
2. Carrier will be required to compensate Extra Operator W. E. Petlock, at minimum hourly rate shown in wage schedule, for eight hours for violation on July 10, 1956 as aforesaid.
3. Carrier will be required to compensate Extra Operator G. E. Campbell, at minimum hourly rate shown in wage schedule, for eight hours for violation on July 11, 1956 as aforesaid.
4. Carrier will be required to compensate Extra Operator A. G. Brunner, at minimum hourly rate shown in wage scale, for eight hours for violation on July 17, 1956, as aforesaid.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement entered into by and between the Pittsburgh and Lake Erie Railroad Company and The Lake Erie and Eastern Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The current Agreement was effective June 1, 1951. The agreement, as amended, is on file with this Division and is, by reference, included in this submission as though set out herein word for word.

The dispute involved herein was handled on the property in the usual manner through the highest officer designated by Carrier to handle such dis-

application of the rules of agreement between the parties. There is nothing in the Act of Congress nor is there anything in any rule between the parties covering this case. If we should attempt to go outside the powers given us by Congress we would merely be entering an award which the courts would not enforce because it would be void on account of want of jurisdiction. * * * "The Board is of the opinion that it has no power to allow this claim for want of any rule specifically covering it." (Emphasis ours)

CONCLUSION: Carrier avers that the work complained of in the instant claims is not work that belongs exclusively to any one class or craft of employes and hence when "PO" interlocking station was out of service, the reversing of a switch by a signalman-maintainer to permit a yard engine to enter a siding to service an industry was not work belonging exclusively to telegraphers. Further, the employes have failed to prove that such work belongs exclusively to them. The Scope Rule of their agreement does not lend support to this allegation, neither does practice nor awards of the Third Division, National Railroad Adjustment Board, sustain this position.

The Carrier respectfully submits that the employes have failed to prove any violation of the agreement, that the claims are without merit and should be denied, because—

1. No agreement rule was violated.
2. Neither the Scope Rule nor any other agreement rule supports the claims.
3. The claims are based on an incident which occurred on the three dates in question, at a point where the controlling interlocking station had been abolished and there were no operators employed.
4. The organization seeks, by medium of these claims, to obtain from your Board a broad interpretation of the Scope Rule which would, in effect, give the employes a new rule and certain monopoly rights which they have not heretofore obtained on this property.
5. Awards of the Third Division support the Carrier's position.
6. The organization's position is built up on untenable premises wholly at variance with practical railroad operation; is without support in the rules, and should be denied.

All evidence introduced in this submission has been discussed in conference or by correspondence with representatives of the Telegraphers' Organization.

OPINION OF BOARD: On July 2, 1956, Carrier by bulletin, effective 2:30 P. M. July 3, 1956, discontinued operation of its "PO" Interlocking Station, known as "PO," located at Beaver Falls, Pennsylvania. All switches within "PO" limits were to be spiked in normal position. On the same date Carrier abolished the three telegrapher positions, which operate in three shifts, and listed as seven day positions. The switches operated from "PO" were operated by electric controlled equipment.

The Organization contends the switches at "PO" were spiked in normal position, but were not disconnected from the interlocking equipment at the time Carrier discontinued "PO". That on claim dates it was necessary for Carrier to use a switch track in order for a yard crew to get their train into a Scrap Steel Yard. The track to the steel yard was connected to west-

bound main track No. 4, and was entered by operating Switch No. 15, formerly operated by electric power from "PO". The Organization contends that on claim dates, that Carrier required employees of another craft to enter the "PO" Station in order to hand crank and operate Switch No. 15, so that the yard crew could enter the steel yard, and return back to mainline track. For such action by Carrier, claims have been filed on behalf of Extra Operators not called to perform the work as alleged.

Carrier contends that on claim dates, "PO" was not in service, that no employees were required to enter "PO" Station as alleged. That Switch No. 15, was operated by use of a hand crank, used by a signalman under Carrier's instruction to open the switch on the ground by use of a hand crank, and located some distance from "PO". Carrier further contends that all interlocking equipment was disconnected, all fuses pulled and electric connections broken, when the station was closed. That at no time did the signalman enter "PO", nor was it possible to operate by hand Switch No. 15 from "PO." Carrier avers the switch was operated by the signalman with a hand crank, on the ground, after the spike had been removed in order to operate the switch. Carrier denies that any work was performed at "PO" by the signalman, that the work of operating switches as is involved here is not work belonging to the telegraphers craft, nor has it ever been exclusive to telegraphers. Carrier denies any violation of the current Agreement.

The Board can find no support in the Scope Rule, Article No. 1, before us to support the allegations of the Organization. This Division has held in numerous awards, that the Scope Rule, being general in character, such as the rule here before us, listing only the positions covered, but does not define the work to be performed, must be shown by proper proof that work is traditionally and by custom performed by telegrapher employees. The record here does not contain such proof as offered here by the Organization. Awards 7955—6824—8421.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of April, 1963.