

Award No. 11884
Docket No. TE-10219

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago and St. Louis Railroad, that:

1. Carrier violated the Agreement between the parties when on July 11, 1956 at Montmorenci, Indiana, it required or permitted the conductor on a Work Train to "OS" and transmit other transportation communications over the telephone outside the assigned hours of the agent at this location.

2. Carrier shall, because of the violation set forth above, compensate the agent at Montmorenci a minimum call payment of two (2) hours in accordance with Rule 12 of the Agreement.

Claim No. 2

1. Carrier violated and continues to violate the Agreement between the parties when at Montmorenci, Indiana it requires or permits employes not covered by the Telegraphers' Agreement to obtain oral instructions over the telephone in lieu of train orders.

2. Carrier shall, because of the violations set forth above, commencing October 1, 1956 and thereafter so long as the violations continue, compensate the regular occupant of the agent's position at Montmorenci, or his successor, a minimum call payment for each of such violations in accordance with Rule 12 of the Agreement.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective June 1, 1948, as amended.

At page 64 of said Agreement is listed:

Montmorenci.....Agent-Opr.....\$1.31

Subsequent increases through the medium of collective bargaining have brought the rate for Montmorenci to \$2.182 per hour, not including the cost of living adjustment as provided for by the Agreement of November 1, 1956.

The Carrier has shown that each of the acts complained of, both separately and collectively, are not in violation of any rule and are those that have been performed in the same manner for 40 years or more with no change in the Scope Rule, and that such work is not reserved to telegraphers by the Scope Rule itself or by tradition, historical practice or custom thereunder. The Employees have not and cannot show to the contrary. As has been shown by the Carrier, Train Order Rule 19 is in no way involved either as a part of the Scope Rule or otherwise. Clearly these claims are without merit and should be denied.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim No. 1 herein is the same in all material respects as in Docket No. TE-10217, Award No. 11882. We adopt the opinion therein as determinative of the issues in Claim No. 1 herein.

Claim No. 2 herein raises the issue of whether Carrier violated the effective Agreement by requiring or permitting telephone transmissions of the following type (R-12):

"Condr. Gaines to dispatcher: How is 416. Dispr.: Pass Templeton about 12:08 P.M. Condr.: Will it be OK to cross over after 416. Dispr.: Two NYC extra East figured Templeton at 12:20 P.M. and 12:40 P.M. Condr.: OK we won't delay them."

Incident to and preceding a crossover movement passing an automatic signal indicating "Stop and Proceed". The same principles and opinion as in Docket No. TE-10217, Award No. 11882 are applicable here insofar as Claim No. 2 rests on alleged violation of the Scope Rule. Insofar as Claim No. 2 rests on an alleged violation of the Train Order Rule, the same is without merit, there having been no train order either issued or required, in connection with the crossover movement.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.