

Award No. 13288
Docket No. TE-12359

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad that on November 10, 1958, the Carrier permitted Denver Williams, Yard Master, Richmond, Indiana, an employe other than an employe covered by the Telegraphers' Agreement, to perform block operator's work when he gave pick-up and tonnage direct to the train dispatcher for SW-2, Engine 7121 at 3:15 P.M. and APS-1, Engine 9769 at 3:29 P.M. Claim is therefore made under Regulation 4-T-1 (a) and Article 5 of the August 21, 1954 Agreement that J. E. Burdette be paid eight (8) hours pay at the straight time rate of pay for this violation, Regulation 5-E-1 and Scope Rule.

EMPLOYEES' STATEMENT OF FACTS: Richmond, Indiana is located at the crossroads of Carrier's main line extending from New York to St. Louis, and its line extending from Chicago to Cincinnati. Carrier's Ft. Wayne Branch, 92 miles in length, also terminates at Richmond.

For its communication service at Richmond Carrier maintains two offices, Glen tower, two miles east of Richmond station, and Newman tower, three-tenths of a mile west of the station. Both offices are manned 24 hours per day, seven days per week with three shifts of "block operators" assigned eight hours each. The positions and the incumbents are subject to the "Telegraphers' Agreement."

The facts relating to this dispute are further set out in the following correspondence exchanged by the parties on the property:

"Urbana, Ohio
December 15, 1958

Mr. J. V. O'Hara
Superintendent-Personnel
444 East Court Street
Cincinnati 2, Ohio

Dear Sir:

I have the following subject to be discussed at our next regular meeting to be held December 23, 1958:

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3. The Employes have presented no evidence of probative value to support their contentions.

So far as that part of the claim requesting that J. E. Burdette be paid eight hours' pay at the straight time rate is concerned, the Carrier has shown that no Rules Agreement violation occurred. Therefore, it is unnecessary for your Honorable Board to decide this secondary issue.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement, And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement, which constitutes the applicable Agreement between the parties and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligation with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement, and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The question here is whether the Scope Rule of the Telegraphers' Agreement was violated when a yardmaster reported by telephone to a train dispatcher what cars and their tonnage two different trains were to pick-up at Richmond, Indiana. The telephoned information was recorded.

Telegraphers argue that the work in question "belongs to them by custom, by agreement, and by craft and class." They cite Award No. 3524 between the same parties, issued in 1947, in which the Board said: "We think it is established as a general proposition that telephone communications con-

sisting of messages and reports of record belong to the telegraphers by virtue of the scope rule of the Telegraphers' Agreement."

Carrier argues that the Scope Rule does not explicitly reserve the work in question for the Telegraphers; that the Telegraphers have produced no evidence of history, custom or practice to show that the Agreement intends to reserve the work for the Telegraphers; that Carrier has proved a long established contrary practice; and that, therefore, the Agreement was not violated as claimed. Carrier cites the Opinion and Award in National Mediation Board Arbitration No. 153, between the same parties, and issued in 1951. That Award established a new rule in the Telegraphers' Agreement (as well as in certain other Agreements) restricting Train and Engine Service Employees in copying train orders under certain conditions. The opinion accompanying the Award found that the particular history of this Carrier proved that the Telegraphers' Agreement had not reserved all communication by telephone of messages and reports of record to the Telegraphers. The opinion ended:

"For the reasons stated, it is our view that a new rule should be added to the agreements of the four Organizations which are parties hereto which will impose restrictions on the copying of train orders by employees not covered by the O.R.T. Agreement only at certain points or under certain circumstances, and that other uses made of the telephone should not be proscribed by this rule. * * * For the sake of clarity, * * * it should be stated that this rule is not intended to prohibit or limit any of the practices not explicitly described therein, including movements on secondary tracks, and the methods of facilitating the movement of track cars or any of the types of work trains."

The argument that exclusive right to this particular work should be found for the Telegraphers on the basis of the finding in Award No. 3524 or other similar findings in other cited awards, is properly negated by the Opinion in Arbitration Case No. 153. Similarly, examination of the Dissent together with that opinion disposes of the argument that the involved work belongs to the Telegraphers "by craft and class." The Scope Rule might be shown to intend the reservation of the work in question for the Telegraphers by evidence that the particular duties were consistently and exclusively assigned to employees covered by the Telegraphers' Agreement. As participants in National Mediation Board Arbitration Case No. 153, Telegraphers should certainly have been aware that strong proof of practice would be required to establish their exclusive right to the work involved here. No such proof can be found in the record. The possible invalidity of Carrier's evidence of contrary practice does not alter the fact that Telegraphers have failed to prove their case. We cannot find on the basis of this record that the involved work was reserved exclusively for the Telegraphers. Therefore, the Agreement was not violated as claimed.

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 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 10th day of February, 1965.