

Award No. 13792

Docket No. TE-14430

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Boston & Maine Railroad, that:

1. Carrier violated and continues to violate the August 1, 1950 Agreement between the parties when, effective Wednesday, April 25, 1962, it unilaterally and arbitrarily removed from the Agreement and from the employees covered thereby, the work of operating switches and signals by means of levers, the operation of the Hoosac Tunnel exhaust fans, the operation of the Hoosac Tunnel doors, the other related work controlled and performed from a central point at North Adams (Tower) Mass., and transferred this work to persons not covered by the Agreement in the Train Dispatchers' Office at Greenfield, Mass.
2. Carrier shall restore to the Agreement and to the employees subject thereto, all of the above listed work it has removed therefrom and re-establish the positions of Train Director, and permit them to perform the disputed work.
3. Commencing at 4:00 P.M., April 25, 1962, and continuing thereafter until the violation is corrected by return of the work and restoration of the stated positions, for each and every eight (8) hour shift, Carrier shall compensate the following named employees, plus any other employees adversely affected, whose names shall be determined by a joint check of Carrier's records, in the amount equivalent to a day's pay at the rate applicable to the shift and position involved, except in the case of employees on rest days and holidays, who shall be compensated an amount equivalent to a day's pay at the time and one-half rate applicable, and
4. Commencing April 25, 1962, and continuing thereafter until the violation is corrected, Carrier shall compensate the following named employees, plus any other employees adversely affected, whose

names shall be determined by a joint check of Carrier's records, for all added expenses such as daily round-trip auto mileage between home and work location, and cost of changing home address if such occurred, arising from change of work location from that of North Adams, Mass., through displacement upon or successful application for another position caused by and subsequent to loss of Train Director position at North Adams, Mass.:

E. P. Scully
R. Beaudry
E. L. LaChapelle
J. F. Girouard
A. C. Morgan

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective August 1, 1950, as amended and supplemented, is available to your Board, and by this reference is made a part hereof.

North Adams Tower, Massachusetts, is located on the Fitchburg Division of the Carrier's lines. All claimants named in Statement of Claim hold seniority rights on that seniority district. Prior to April 25, 1962, there were three Train Director positions at North Adams Tower, providing continuous service. The assignments and incumbents of the positions were as follows:

1st Shift - 8:00 A. M. to 4:00 P. M., rest days Monday and Tuesday. Incumbent - E. P. Scully.

2nd Shift - 4:00 P. M. to 12:00 Midnight, rest days Wednesday and Thursday. Incumbent - R. Beaudry.

3rd Shift - 12:00 Midnight to 8:00 A. M., rest days Thursday and Friday. Incumbent - E. L. LaChapelle.

Rest day relief of the positions was furnished by regularly assigned relief employees. The relief position to which J. F. Girouard was assigned works:

Monday and Tuesday - 1st Shift
Wednesday and Thursday - 2nd Shift
Friday - 3rd Shift
(Rest days Saturday and Sunday)

A. C. Morgan was assigned to a relief position which relieved on the 3rd Shift at North Adams Tower on Thursday as a part of a regular relief position working at North Adams Tower, and Johnsville Tower, New York.

This dispute arose out of Carrier's action of, effective April 25, 1962, unilaterally and arbitrarily removing from the Agreement and from the employees covered thereby, the work of operating switches and signals by means of levers, the operation of the Hoosac Tunnel exhaust fans, the operation of the Hoosac Tunnel doors, and other related work controlled and performed from a central point at North Adams Tower, Massachusetts, and transferred this work to persons not covered by the Agreement in the Train Dispatchers' Office at Greenfield, Massachusetts.

The letters shown as Carrier's Exhibits D and E interpreted the scope rule of the 1944 Agreement which was not changed in the 1950 Agreement. Therefore, there would be no basis for argument that the interpretation of the 1950 scope rule was changed.

There are numerous letters and memoranda still effective that were not reproduced in the reprint of the 1950 (booklet) Agreement, yet are still effective and interpret the current agreement.

For example: attached as Carrier's Exhibit G is agreement effective November 19, 1938, which contains instructions in the handling of train orders. This is signed by the same former General Chairman (H. L. Lones) who entered into the agreement with former Chief of Personnel R. W. Hall in the 1944 letters, accepting the fact that it would be permissive for the railroad to extend CTC territory and have dispatchers handle such territory. Therefore, the 1944 letters shown as Carrier's Exhibits D and E are still effective.

Thus, the Petitioner fully realizes that ORT employees do not have right to the work in question as supported by Carrier's Exhibits D and E, and also by Third Division Award 8660.

Your Board's attention is also directed to Third Division Award No. 8143, particularly the last sentence of Opinion of Board reading:

"The transfer of CTC installations in the present case produced a type of jurisdictional dispute situation which is not a proper matter for action by this Board; the case should be remanded for negotiations between the three parties in interest (Dispatchers, Telegraphers, and Carrier) and, in case of failure, the National Mediation Board is the proper forum."

(Exhibits not reproduced.)

OPINION OF BOARD: Since the parties, issues, factual circumstances, and the agreement involved are the same as in Award No. 13791, we apply the same reasoning to deny the claims.

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 30th day of July 1965.