

Award No. 14153

Docket No. TE-14023

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines), that:

1. Carrier violated the provisions of paragraph 2 of Memorandum of Agreement dated September 23, 1944, commencing 12:01 A. M., June 5, 1961, when it placed in service a remote control board at Mesa, Arizona and required the telegraphers thereat to operate remote control at McQueen, Arizona, a siding beyond the limits of their own station.

2. The Carrier shall, because of the violation set out in paragraph one hereof, compensate the incumbents of the Agent-Telegrapher, 2nd, 3rd and relief Telegrapher-Clerk positions at Mesa, Arizona and/or their successors an amount equivalent to an increase of six (6) cents per hour to the rate of pay in effect June 5, 1961, less any increase paid to them by reason of the addition of remote control at Mesa, Arizona, so long as the violation here complained of continues.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective December 1, 1944, reprinted March 1, 1951, and as otherwise amended. Copies of said Agreements are on file with your Board and are by reference thereto made a part hereof.

At page 69 of said Agreement are listed the positions existing at Mesa, Arizona, on the effective date thereof. The listing, for your ready reference, reads:

"Mesa.....	Agent	\$1.885
"	1st Telegrapher-Clerk.....	1.6675
"	2nd Telegrapher-Clerk.....	1.6675
"	3rd Telegrapher-Clerk.....	1.6675"

The incumbents of the above positions and/or their successors are the claimants in this case and will hereinafter be referred to as claimants.

The Southern Pacific Company is the respondent and will hereinafter be referred to as Carrier.

are clearly identified as "take siding indicators" or "M" and "S" Signals, the latter ("M" Signals) being precisely what are involved in this dispute. That special rules will take precedence over general rules is a principle well recognized by this Division. In its Award 4507, the following appears:

"* * * It is well recognized principle of contract construction that special rules prevail over general rules, leaving the latter to operate in the field not covered by the former * * *"

It is a significant fact that since Memorandum of Agreement of September 23, 1944, was made effective, in addition to locations named in paragraph 3(a) of that agreement at which points a telegrapher receives 1.8 cents an hour, separate and apart from the established wage rate, for operating "M and S" signals, similar installations have been made at 29 additional locations, as provided in paragraph 3(b) of that Agreement with no protest from Petitioner until the instant claim.

It would appear that Petitioner is seeking to use this claim as a vehicle to secure from this Division an increase in agreed-upon rates of pay, a function it is without authority to discharge and has consistently declined to do.

CONCLUSION

Carrier has conclusively shown herein the claim is unwarranted and totally lacking in merit, and asks that if not dismissed, it be denied.
(Exhibits not reproduced.)

OPINION OF BOARD: McQueen, Arizona, is located at Milepost 56 and Mesa, Arizona is located at Milepost 58. Incumbents of telegraphers positions at Mesa are the Claimants in this case.

It is the contention of the Petitioners that on June 5, 1961, a remote control interlocking panel was placed in operation at Mesa station to be operated by the Telegraphers at Mesa and to control the traffic from off the Christmas Branch between McQueen and Mesa, setting up block indications at McQueen and also at Mesa; Petitioners further contend that Rule 31 (h) of the Agreement supplemented by the Memorandum of Agreement entered into by the parties on the 23rd day of September, 1944, are controlling in this instant case—that in paragraph 2 of the September 23, 1944, Memorandum Agreement it is provided that an increase of 6 cents per hour will be made to the basic rate of pay of Telegraphers' positions where the telegrapher is required to operate remote control at one siding, beyond the limits of his own station which occurred here, namely at McQueen.

To the contrary it is urged by the Carrier that the provisions of paragraph 3 (a) of the September 23, 1944, Memorandum of Agreement is the controlling factor in the situation here presented and that an increase of .018 per hour has been paid on the three telegraphers' positions at Mesa effective June 5, 1961, in accordance with paragraph 3 (a); further, that the panel which has been referred to controls an "M" signal for which the incumbents were properly compensated is identical to the installation referred to in paragraph 3 (a) of the Memorandum of Agreement.

In reply to Carrier's position, the Petitioners contend that the device which the telegraphers were required to operate at Mesa, Arizona, station does not limit its action to the Mesa yard limits as contemplated in paragraph 3 (a and b) of the Memorandum of Agreement but the device controls the movements of trains westbound from McQueen which is a siding outside the yard limits

of Mesa station; that nothing in paragraph 2 of the Memorandum of Agreement stipulates that the remote control must be interlocked in order to entitle the telegraphers to the 6 cent rate increase.

Rule 31 Section (h) of the agreement provides:

“Employes regularly required to handle remote or centralized traffic control device shall be paid an additional allowance to cover such service predicated upon the extent of increased duties and responsibilities.”

The Memorandum of Agreement appears on pages 92 to 94 of the agreement between the parties and is reproduced in its entirety in the Petitioner's submission.

The sole question to be decided in this case is whether paragraph 2 of the September 23, 1944, Memorandum of Agreement applies to the facts involved as contended by the Petitioners or paragraph 3 is controlling as urged by the Carrier.

Carrier's Timetable Bulletin No. 85, effective June 1, 1961, provides in part, as follows:

“RULE 705. LETTER TYPE INDICATORS.

Indicators located as follows:

Illum. Letter	Location	Approaching	Authorized and Requires
M	Stub Mast MP 924	Junction Switch at McQueen (Christmas Branch)	Enter Main Track and proceed to east siding switch at Mesa.”

Bulletin No. 85 indicates quite clearly that a remote control interlocking panel was placed in operation at Mesa Station, it was to control the traffic from off the Christmas Branch between McQueen and Mesa, setting up block indications at McQueen and also at Mesa.

Carrier did not challenge the statement of the Petitioner concerning the operation and purpose of the installation. Carrier merely insisted that the panel in question controls an “M” signal for which incumbents of the positions involved were properly compensated as Carrier is urging that because the aspect of the signal at McQueen shows the letter “M”, paragraph 3 applies, regardless of the purpose of the signal or its effect.

Essentially the same argument was advanced in a case involving the same parties and on the same property—Award 8315 (Shugrue). In that case a signal was installed which gave its indication by a flashing white light instead of the usual illuminated “M”. On the ground that this was not an “M” signal as referred to in paragraph 3 of this same Memorandum Agreement, the Carrier refused to make an adjustment in rates though the facts indicated that the flashing white light served exactly the same purpose as an “M” signal. The employes position was sustained as is evidenced by the holding that:

“* * * The Carrier may not evade the provisions of the applicable Rules by the installation of a signal which, while physically different,

serves the same purpose and requires the same additional duties and responsibilities for which an arbitrary payment has been provided under the Rules and Agreement here before us."

We have the same Memorandum Agreement before us and the same reasoning should apply. Carrier installed signals at McQueen and at Mesa for the purpose of controlling train movements between points. That is the purpose of more conventional "remote control" installations.

Award 8315 is exactly in point and should control the action of this Board. The claim will be sustained.

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

The September 23, 1944, Memorandum of Agreement has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1966.