

Award No. 14301
Docket No. TE-13485

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven & Hartford Railroad Company, that:

1. Carrier violated the parties' Agreement on January 1, 1961, by permitting or requiring a Motor Hand Car Operator, who is not covered thereunder, to handle (receive and copy) motor hand car messages, at Kingston, Rhode Island.
2. Carrier shall now be required to pay Mr. W. H. Reynolds, regularly assigned Signal Station Operator at Kingston, a "call" for the violation. (Carrier's File — "Railroad Docket 8888").

EMPLOYEES' STATEMENT OF FACTS: Mr. W. H. Reynolds, claimant, occupied a position classified as Signal Station Operator at Kingston, Rhode Island. Kingston is on Carrier's main line, designated as the Shore Line, situated between New Haven, Connecticut, and Providence, Rhode Island. Mr. Reynolds held the first trick position, assigned 7:55 A. M. to 3:55 P. M., Monday through Friday, with Saturday and Sunday rest days. The claim incident occurred on Sunday, January 1, 1961, Mr. Reynolds' rest day.

On the stated day, Motor Hand Car Operator A. Carsetti, who is not covered by the parties' Agreement, handled (received and copied) at Kingston, Hand Car Messages Nos. 306 and 307 and blocked his hand car. The two messages handled by Mr. Carsetti are reproduced following:

"THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY

he stopped at Kingston, Rhode Island, at a time when the signal station was closed and telephoned the block operator at Westerly.

The operator at Westerly relayed to the track patrolman at Kingston a motor hand car message from the dispatcher advising that no extra trains would operate over track #4 between Kingston and Danville until 11:45 A. M. Upon receipt of the message above, the track car proceeded to Davisville where the patrolman reported to the operator at Westerly that he was clear of the track.

Track patrols regularly operate under the protection of motor hand car messages of the type here involved. Such a message confers no right upon the car over other trains, but serves to advise that no extra trains will operate over the track involved. This information, coupled with timetable schedules of regular trains, informs the patrol car operator of the times when he must clear the track. In effect, the message serves the same function as a line-up.

It is contended that under the terms of the Agreement, the regularly assigned operator at Kingston should have been called to copy the motor hand car message at Kingston.

Correspondence is attached in exhibit form as follows:

Exhibit "A" — General Chairman Marr's claim of April 3, 1961

Exhibit "B" — Carrier's decision of July 7, 1961

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier maintains a signal station at Kingston, Rhode Island, which is manned by telegraphers, round-the-clock, on all days except Sunday. On Sunday, January 1, 1961 a Track Patrolman, operating a highway-rail motor hand car and engaged in track patrol work, stopped at Kingston. He used the train dispatching telephone to call the telegrapher at Westerly who, in turn, communicated with the dispatcher and, later, relayed a motor hand car message from the dispatcher back to the patrolman. The message contained authority for the patrolman to execute two written forms which served to protect movement of the track car in both directions between Kingston and Davisville.

Petitioner claims that Station Operator W. H. Reynolds, regularly assigned to the first trick at Kingston (but on his rest day on January 1), should have been called for the purpose of handling the motor hand car messages and that Carrier violated the Agreement by permitting a Patrolman, not covered by the Agreement, to accomplish this task.

In Award 5431 (1951), involving these parties, the Board determined, after considering arguments concerning handling of motor hand car messages similar to those advanced here, that such work, when performed by employees under the Telegraphers' Agreement, could not be assigned to others. Application of that ruling was limited to the shift or shifts on which the work had been historically performed (e.g., since it had never been performed by Telegraphers from 9:30 P. M. to 5:30 A. M., Carrier could properly assign it to others during such hours). The Board reconfirmed its ruling in Award 8133 (1957), holding it applicable to rest days "since work performed by a craft during the regular hours or days of an assignment cannot be performed by one not covered by the agreement when such duties are required on days

or hours outside such regular assignment." Claims covering third trick assignments to non-telegraphers were rejected, however, since no telegrapher had been customarily assigned to such a shift (this was consistent with the Award 5431 ruling).

The Board has not deviated from these holdings and they are controlling here. S.B.A. No. 306's denial Award in Case No. 15, cited by Carrier, did not represent a departure from Award 5431 principles since it concerned a place where no operator had been located. Mr. Reynolds' claim must 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

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1966.