



Award No. 14330

Docket No. TE-13990

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD CO.

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Susquehanna & Western Railroad, that:

1. Carrier violated the parties' Agreement because, on May 19, 1961, it abolished the Operator-Clerk position (second shift) at Babbitt, New Jersey, and transferred the work thereof to employees not under the scope of the Agreement.
2. Carrier shall restore the second shift Operator-Clerk position at Babbitt, and restore all work belonging to said position.
3. Carrier shall be required to compensate the senior idle employe, extra in preference, a day's pay (8 hours) for each day the violation exists, commencing September 4, 1961.

EMPLOYEES' STATEMENT OF FACTS: Because it would be difficult to explain by words alone, the involvement of the operational changes Carrier has taken to bring about the herein claim, we therefore attach hereto, as ORT Exhibit No. 1 a diagram of a portion of the railroad as it existed prior to May 1, 1961; and a similar diagram depicting the operations over the same area after said date, which is designated as ORT Exhibit No. 2.

The heavy lines on the exhibited diagrams show the tracks owned by the New York, Susquehanna & Western Railroad and the lighter lines show the tracks owned by the Erie Railroad. Through mutual arrangement and agreement between the managements of the New York, Susquehanna & Western and Erie Railroads, each, prior to May 1, 1961, operated on the other's trackage in the area involved, thereby affording trains of both Carriers to travel east on the tracks of the New York, Susquehanna & Western and trains of both Carriers to travel west on the tracks of the Erie—between Granton Junction and Croxton, New Jersey.

The diverging point of trains of both Carriers was made at Granton Junction (GR Tower) which was manned by employees of the Erie Railroad, who were also represented by this Organization and who handled all communication service and switch movements thereat for both Carriers.

At the instance of action taken by the Erie Railroad, the mutual agreement of track sharing by both Carriers was terminated, whereby each Carrier was therefore required to operate on its own trackage beginning May 1, 1961.

"OS"ed, and switched their own trains, the same work performed by the Operator-Clerk prior to the abolishment of said position.

The correspondence exchanged between the parties in the property handling of this claim is attached hereto as ORT Exhibits Nos. 3 through 10. Said correspondence will disclose that this dispute has been handled in accordance with the requirements of law and rules of procedure of your Board, but failed of settlement.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: A position, temporary, of second trick operator was advertised and existed only between May 1st and May 19th, 1961. It was advertised as a temporary position.

The creation of this temporary position was brought about by notice Susquehanna received from Erie R.R. Company that they no longer wished to operate eastbound over Susquehanna main track; that connection at Granton Junction from their Northern Branch to Susquehanna would be removed and this, in turn, forced Susquehanna to operate its trains (3 passenger east and 3 passenger west, plus extra freight trains) on our main track in both directions. Thus the arrangement of long standing whereby each Railroad would use the other's track in one direction between Granton Junction Tower and JR Tower, Croxton, was cancelled.

The Susquehanna, at that time, was in the process of installing a CTC Signal System of operation, including therein the aforesaid territory. In its initial study phase it was tentatively felt by both Railroads that Erie would abandon its main track in this territory and both Railroads would operate over Susquehanna main track in both directions between GR and JR. This plan having been abandoned, Susquehanna in a relatively short time was forced to make arrangements for its own single track operation involving the design and installation of a temporary signal system to function until the CTC had been completed and as a matter of Safety to the traveling public we established a temporary operator's position, second trick, at Babbitt Station during the period May 1 to May 19, 1961. The sole purpose of this position was to have an added item of insurance during such time as might be necessary to make sure that signal system involved was properly functioning. When the temporary signal system was functioning properly and we were assured that it was, there was no further necessity for the position and it was abolished.

Operation after May 19th was established normally in the same manner as other similar operations throughout the system. The Passenger trains enter and clear the territory during the time the Agent (first trick Agent-Operator) is on duty. The Freight Train, which in the past, normally operated when no operator was on duty, when it received permission to leave Little Ferry Yard was at the same time authorized to pass the signal at Babbitt in both directions of movement. This is the custom and practice on the Railroad and has been for years and no agreement is violated thereby.

There is in effect on the property an agreement effective June 18, 1957 between the Carrier and The Order of Railroad Telegraphers covering working conditions and compensation of employees represented by that Organization, which agreement, is by reference, made a part of this submission.

OPINION OF THE BOARD: The original Statement of Claim on the property contained the following: "Carrier violated the Agreement . . . when on Friday, May 19, 1961, the Operator's position at Babbitt was abolished,

without in fact abolishing the work thereto which it transferred to employees not covered by the Telegraphers' Agreement. Dispatchers are clearing and granting permission to train crews to proceed from double track to single track and performing other work which had been assigned to an Operator. . . ."

In the Statement of Claim presented to the Board which is somewhat simplified we note the following: Carrier violated the parties Agreement because, on May 19, 1961, it abolished the Operator-Clerk position (second shift) at Babbitt, New Jersey, and transferred the work thereof to employees not under the scope of the Agreement."

Petitioner having abandoned (2) in the Statement of Claim, we must conclude that Petitioner's claim has been submitted to this Board on a single issue of fact as indicated above; both parties recognize it substantially as such although the Submissions have fanned out into other questions which, so far as we can ascertain from the record, were neither presented nor discussed on the property.

We will confine ourselves, consequently, to a determination of the question of whether or not Carrier, when it abolished the Operator-Clerk position (second shift) at Babbitt on May 19, 1961, transferred work of the position to employees not under the scope of the Agreement, namely train crews.

Because of a change in its method of operation, Carrier on May 1, 1961, created a temporary position of Operator-Clerk at Babbitt, New Jersey, with assigned hours of 2:00 P.M. to 10:00 P.M., Monday to Friday. With the establishment of the Operator-Clerk position, the hours of the existing position of Agent-Operator were changed from 6:00 A.M. to 2:00 P.M., instead of from 7:00 A.M. to 4:00 P.M. as had existed before. On May 19, 1961, Carrier abolished the Operator-Clerk position which had been established May 1, 1961, on which an extra operator was utilized to work the position. Concurrently therewith the hours of the regularly assigned Agent-Operator were rearranged to work from 6:15 A.M. to 5:05 P.M. with one hour for lunch.

The Petitioner contends that the Agent-Operator as part of his duty throws switches and the signal for trains entering and departing from a single track, the main track; that he gets permission from the dispatcher to clear and OS trains; that when he is off duty train crews, not under the Telegraphers' Agreement, handle the same switches in the same way; that this is exclusively the work of a block operator and telephoner belonging to Telegraphers and, in assigning this work to train crews, Carrier is violating the Agreement.

Carrier, on the other hand, contends that on or about May 1, Carrier changed its operation from a double track to a single track movement; that the Carrier was thereafter forced to operate its trains (three passenger trains east and three passenger trains west, plus extra freight trains) on the main track in both directions; that the sole purpose of adding an extra operator position on May 1, was to have an added item of insurance for safety during such time and that when the temporary signal system was functioning properly there was no further necessity for the extra operator position and it was abolished on May 19; that when operating from a double to a single track it was necessary for the train crews to contact the dispatcher and get permission to leave Little Ferry Yard and it was authorized at the same time to pass the signal at Babbitt in both directions of movement; Carrier contends, further, that for at least 18 to 20 years it has been the practice on this property for train crews to contact the dispatcher to use crossovers, operate from a double to a single track and to handle their own switches in connection with such movement; that; consequently there is no violation of the Agreement.

This is a Scope Rule case—one wherein the Petitioner contends that work reserved to employees, under the Telegraphers' Agreement, is being performed by persons not covered thereby. The rule in the instant case does not undertake to define or describe work, it merely lists positions and there is no presumption of exclusivity of work. The burden is on the Petitioner to establish that from tradition, history and custom this work belonged to Telegraphers under their Agreement. There is nothing in the record indicating items of record were transmitted by others. Carrier has contended that train service employees have a right to handle switches and secure permission to pass the signals as work incidental to their duty in moving their own trains and that this practice has prevailed throughout the Carrier's system. Petitioner has failed to refute Carrier's contention and has offered nothing to establish that the work performed herein by train crews belonged exclusively to employees covered by the Telegraphers' Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearings;

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April 1966.