Award No. 14341
Docket No. TE-14022

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

THE CINCINNATI NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

Carrier violated the provisions of the Telegraphers' Agreement, when effective 11:00 P. M., Saturday, August 26, 1961, it abolished the first, second and third trick telegrapher-levermen positions, "DV" Tower, Danville, Kentucky, and by abolishing these three positions it caused the rest day relief position telegrapher-leverman, "DV" Tower, Danville, Kentucky, to be abolished. This action was done by the Carrier when it was known that the communication work required on the positions since time immerial and claimants had been performing on the positions herein referred to prior to date of abolishment, remained to be performed and that after the effective date of abolishment it required and permitted employes not covered by the Telegraphers' Agreement to perform the communication and other duties that had been performed by claimants named herein on the first, second, third and rest day relief positions of the telegrapher-levermen at "DV" Tower, Danville, Kentucky.

In consequence of this improper action on the part of the Carrier, the Carrier shall now be required to compensate Claimant D. J. Tally, who occupied the position of first trick telegrapher-leverman, "DV" Tower, Danville, Kentucky, prior to abolishment on Saturday, August 26, 1961, Claimant R. A. Gardner, who occupied the position of second trick telegrapher-leverman, "DV" Tower, Danville, Kentucky, prior to abolishment on Saturday, August 26, 1961, Claimant Mrs. R. M. Hasty, who occupied the position of third trick telegrapher-leverman, "DV" Tower, Danville, Kentucky, prior to abolishment on Saturday, August 26, 1961, Claimant J. H. Hammontree, who occupied the position of relief day telegrapher-leverman, "DV" Tower, Danville, Kentucky, prior to abolishment Saturday, August 26, 1961, and Claimant B. J. Brown, who performed work on the odd day (sixth day) of the rest day relief position, "DV" Tower, Danville, Kentucky, prior to abolishment Saturday, August 26, 1961, for loss of all wages, plus travel time and any other expenses incurred subsequent to Saturday, August 26, 1961.

Further, it shall compensate all other telegraphers holding seniority under the Telegraphers' Agreement on the C.N.O.&T.P. Railway who have been ad-

versely affected as a result of the action of the Carrier in abolishing the positions of telegrapher-levermen, "DV" Tower, Danville, Kentucky, Saturday, August 26, 1961, for loss of all wages, plus travel time and any other expenses incurred, subsequent to August 26, 1961. Further, that the Carrier shall restore the positions of first trick, second trick, third trick and rest day relief positions of telegrapher-levermen, "DV" Tower, Danville, Kentucky, as they were prior to Saturday, August 26, 1961, that claimants shall be restored to position held at "DV" Tower, Danville, Kentucky, prior to Saturday, August 26, 1961.

EMPLOYES' STATEMENT OF FACTS: Prior to August 26, 1961, the Carrier maintained three negotiated positions of telegrapher-leverman as well as a relief day assignment at Danville, Kentucky. Also at Danville the Carrier maintained negotiated position of station agent. The four positions are shown at page 96 of the schedule Agreement on the Cincinnati, New Orleans and Texas Pacific Railway:

Station — Danville "DV"		Regular Assigned
First shift telegrapher-leverman	7:00 A. M. to 3:00 P. M.	D. J. Talley
Second shift telegrapher-leverman	3:00 P. M. to 11:00 P. M.	R. A. Gardner
Third shift telegrapher-leverman	11:00 P. M. to 7:00 A. M.	R. M. Hasty
Rest day relief position		J. M. Hammontree

On the sixth day of relief at "DV" Tower, Mr. B. J. Brown performed the relief work.

Danville, Kentucky is located on the main line of the CNO&TP Division, 116.6 miles from Cincinnati, Ohio, and 221.4 miles from Chattanooga, Tennessee. It is the terminal for the first and second district of the CNO&TP and is also terminal for the Louisville Division of the Southern Railway that is operated between Louisville, Kentucky and Danville, Kentucky, a distance of 93.2 miles. It is clear that this is a terminal with considerable activity. Each day of the week there is a requirement of two yard engines and crews working the first shift, two yard engines working the second shift and one yard engine working the third shift to keep the operation of this large and busy terminal current. For each day there are on the CNO&TP two scheduled first class passenger trains southbound, two scheduled first class freight trains southbound and one local freight third class southbound. Northbound there are two scheduled passenger trains first class and three scheduled freight trains first class. There is also one scheduled freight train second class and one scheduled local freight. Northbound from Danville there are two scheduled passenger trains first class, three scheduled freight trains first class. Southbound into Danville there are two scheduled passenger trains first class, two scheduled freight trains first class, one scheduled freight train second class and one scheduled local freight third class. Into Danville from the Louisville, Kentucky Division there are one scheduled first class freight, two scheduled freight trains second class and one scheduled local freight third class. From Danville going to the Louisville Division there are one scheduled freight train first class, two scheduled freight trains second class, one scheduled freight third class. In addition to the scheduled trains shown in the CNO&TP Time Table No. 57 and the Louisville Division Time Table No. 94, extra trains are frequently operated in and out of Danville on both division.

continue in effect until thirty (30) days' written notice is given by either party to the other of desire to revise or modify in accordance with the provisions of the Railway Labor Act."

The Chicago Agreement of August 21, 1954, contains the following provisions identified as Section 1 (a) of Article V:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

OPINION OF BOARD: Prior to August, 1961, Carrier maintained a continuous train order officer at Danville, Kentucky, in a structure located about two blocks north of the combination yard office, freight and passenger station, known as "DV" Tower. It was also a remote control and interlocking plant. Three regular and two relief telegrapher-levermen were assigned and manned the tower. Danville, Kentucky, is 116 miles south of Cincinnati, Ohio, on the Carrier's railroad, which extended from Cincinnati, Ohio, south to Chattanooga, Tennessee, a distance of 338 miles.

In the month of August, 1961, the Carrier completed an electric centralized traffic control installation on its railroad known as a "CTC" machine. Prior to that date a CTC was in operation on both sides of Danville but had not been extended through the Danville area.

On August 26, 1961, the Division Superintendent of the Carrier, issued Bulletin No. 35, which was posted at Danville, advising that effective on that date the train order office at "DV" Tower would be discontinued. On the same day the Chief Dispatcher issued a message directed to the telegrapher-levermen at "DV" Tower advising them that all positions at the Tower were abolished. Thereafter the work performed at "DV" Tower was controlled by the CTC machine located at Somerset, Kentucky, and all equipment was removed from the "DV" Tower and the structure wherein the tower was contained was completely dismantled.

After the closing of the "DV" Tower and the abolishment of the telegrapher-leverman positions, the employes of the Carrier who had manned the tower placed themselves in other positions on the Carrier's system in accordance with the provisions of Rule 27 of the Agreement between the parties.

The Organization contends that after the closing of the "DV" Tower, at Danville, and the positions there being abolished, the Carrier permitted employes not covered by the Telegraphers' Agreement to perform the duties that had previously been performed by the Claimants named prior to the closing of the tower and the abolishment of the positions. The Organization further contends that this work belongs solely and exclusively to telegraphers under the Agreement, and relies on Rule 1, the Scope Rule of the Agreement, which states as follows:

"RULE 1 Scope

(a) This agreement applies to all telegraphers, telegrapher-clerks, telephone operators (except telephone switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, block operators and staffmen, operators of mechanical telegraph machines, wir echiefs, assistant wire chiefs, or analogous positions hereafter established; also such station agents and assistant station agents and ticket agents as are listed herein.

(b) The word 'employe' as used in these rules will apply to all the foregoing classes, and employes will be classified according to duties performed."

From a reading of the foregoing Scope Rule, it is evident that it is of the general type. It does not define or describe work, but only lists by title the classes of employees covered by the terms and provisions of the Agreement. Certainly the work incident to the operation of a CTC installation is not specifically mentioned.

A CTC system has been defined as follows:

"A term applied to a system of railway operation by means of which the movement of trains over routes and through blocks on a designated section of track or tracks is directed by signals controlled from a designated point, superseding time-table superiority of trains, and without requiring the use of train orders." See Award 4452—Carter.

This Board has consistently, in interpreting such general type rules, applied the principle of determining whether or not the work in dispute has been performed solely and exclusively by Claimants through practice, custom and tradition. We have also held that the burden of proving such sole and exclusive right, through practice, custom and tradition, is on the Organization by requiring it to submit competent supporting evidence to establish any violation of the Agreement. See Awards 14033, 13612, 13741, 13378, 12685.

The Organization, in support of its position and contention that the work involved has been customarily and traditionally performed by Claimants and must be now performed by employes covered by the Agreement between the parties, is in the form of written statements. (ORT Exhibit 9)

The Carrier denies that the work involved by tradition, custom and practice belongs exclusively and solely to the employes under the Agreement. The Carrier also submits statements in support of its position. (Carrier's Exhibits "B", "C", "D", "E", "F", "G" and "H".

The parties are in sharp disagreement with reference to the controlling question as to whether or not the disputed work had been solely and exclusively assigned, by custom or tradition, to the telegrapher employes. We find that there is no competent evidence in the record for resolving these opposing contentions of fact.

The Organization has failed to meet its burden of proving sole and exclusive rights to the performance of this work by tradition, custom and practice, which it is required and must do when a claim, such as the one before us,

is made under the general type Scope Rule which is contained in the Agreement between the parties. Accordingly, the claims must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record an dall the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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

The claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1966

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