Award No. 14427
Docket No. TE-14253

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY
(Eastern District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (Eastern District), that:

1. Carrier violated the Agreement between the parties hereto when on March 23, 1962, it opened block and train order stations near Lawrence and Perry, Kansas and failed to assign employes covered by the Telegraphers' Agreement to perform the work in connection with the operation of such stations.

2. Carrier shall be required to compensate L. F. Luke and W. J. Brull each, employes covered by the Agreement, idle on rest day, in the amount of eight (8) hours' pay at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties effective February 1, 1951, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim arose out of Carrier's action of failing and refusing to assign Telegraphers to perform the work of operating block stations at Mile Post 40 and at Mile Post 51. Mile Post 40 is located near Lawrence, Kansas, and Mile Post 51 is near Perry, Kansas. We will hereafter refer to these block stations as Lawrence A and Perry B. The territory involved is located on the Carrier's main line between Kansas City, Missouri, and Topeka, Kansas. The Carrier has double tracks in this territory. That is, the traffic on one of the main tracks, is in a westerly direction, and on the other in an easterly direction. This is a very busy piece of trackage due to the fact that not only Union Pacific trains operate thereon between Kansas City and Topeka, but also the Rock Island Railroad main line trains use this same trackage between these

board operators), teletype operators, printer operators, agents non-telegraphers, and agents non-telephoners herein listed."

(Exhibits not reproduced.)

OPINION OF BOARD: On March 23, 1962, a train derailed near Lawrence, Kansas blocking the eastward main track so that it was necessary for six hours to use the westward main track for all traffic.

Carrier stationed Conductors at mile post 40 and mile post 51 to function on the eastward main track in a safety arrangement which was referred to by Carrier as the "human staff system." The Conductors controlled the movement of all trains on the eleven miles of single track through the process of communicating with the Train Dispatcher and with each other by means of telephones installed for the purpose. There are no allegations that any written records were kept by the Conductors.

The Organization asserts that the Conductors functioned as block operators and that such work is reserved to Telegraphers by the Scope Rule of the Agreement, which is:

"RULE 1. SCOPE

This agreement will govern the wages and working conditions of agents, agent-telegraphers, agent-telephoners, telegraphers, telephoners, telegrapher-clerks, telephoner-clerks, telegrapher-car distributors, ticket clerk-telegraphers, telegrapher-switchtenders, CTC telegraphers, train and tower directors, towermen, levermen, block operators, staffmen, managers, wire chiefs, repeater chiefs, chief operators, printer mechanicians, telephone operators (except switchboard operators), teletype operators, printer operators, agents non-telegraphers, and agents non-telephoners herein listed."

Carrier argues that the Scope Rule is general in nature, setting out classifications of positions but not specifying the work covered by the Agreement; that the burden of proof is on the Organization to prove that the work in question has been historically and exclusively reserved to Telegraphers. Carrier's point is well taken and were this a case of first impression it would be controlling here.

However, this question has been before this Division on five previous occasions, one of which Award 8263 (McCoy), involved the same parties as well as the same issue. On each occasion the Board found that the work was block operation and thus reserved to Claimants under the Scope Rule. The doctrine of stare decisis, if not foreclosing an issue many times decided, is at least persuasive. The Board here finding no palpable error in the previous awards accepts them as controlling. See Awards 8264 (McCoy), 11722 (Rinehart), 11848 (Rose), 14107 (Hall).

The Carrier argues that correspondence from 1935, 1937, etc., and previous grievances on this issue settled on the property are persuasive that Award 8263 (McCoy) was in error, being new information not offered for consideration when that award was made. Taken together, that information shows the Board that the subject dispute is one of long standing which was not settled by this Board until entry of the aforesaid awards. That information cannot now be

heard to overturn Award 8263 and following because those awards have given specificity to what is meant by "block operator" in the Scope Rule. The Agreement is always made up of two parts, the written Agreement itself and the awards defining its terms. As defined by this Division since 1958, the Agreement was violated.

The claim shall be sustained at the pro-rata rate.

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 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 violated.

That the Claim shall be sustained at the pro-rata rate.

AWARD

The Claim is sustained at the pro-rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14427, DOCKET TE-14253 (Referee Rambo)

The Carrier Members' dissent to Award 8263 is hereby adopted as the dissent in this case.

W. M. Roberts
G. L. Naylor
R. A. De Rossett
C. H. Manoogian

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