



Award No. 14460
Docket No. TE-12414

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Western Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka & Santa Fe Railway, that:

1. The Carrier violated the Agreement between the parties when, on or about July 22, 1959, it removed the work of operating switches and signals governing the movement of trains heading in and out main line tracks and other tracks at Abajo Yard at Albuquerque, New Mexico, from employees covered by the Telegraphers' Agreement and delegated the performance of this work to employees not within its coverage;

2. The Carrier shall be required to restore said work to the scope of the Telegraphers' Agreement to be performed by employees covered thereby; and

3. For each and every eight hour shift that the work previously performed by employees under the Agreement at YD Abajo at Albuquerque, New Mexico, is performed by means of CTC equipment operated by train dispatchers at Las Vegas, New Mexico, the Carrier shall be required to compensate the senior idle extra telegraph service employee in an amount equivalent to a day's pay at the rate applicable to the positions at YD Abajo at Albuquerque, New Mexico, and, if there be no idle extra telegraphers, then the Carrier shall compensate the senior telegraph service employee or employees idle on a rest day in an amount equivalent to a day's pay at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Agreement between the parties, bearing effective date of June 1, 1951 is in evidence.

For many years the Carrier maintained an interlocking plant at Abajo, New Mexico. In this office the Carrier maintained three shifts of telegrapher-clerks (leverman) in an around-the-clock service who performed the work of operating switches and signals governing the movement of trains in and out of the Abajo Yards.

OPINION OF BOARD: After modified control equipment was placed in service on July 22, 1959, the work of manipulating levers for switches at Abajo Yard, Albuquerque, New Mexico, which had been performed by telegraphers, was transferred to train dispatchers who were not subject to the Telegraphers' Agreement. As a result three full time telegraphers were eliminated.

The claim herein is that the work be returned to telegraphers and that compensation be paid to the senior idle extra telegraph employee.

The Telegraphers' contention is that the work belongs to telegraphers by virtue of the Scope Rule in the Agreement.

The Carrier takes the position that the work in question can properly be performed by train dispatchers where the CTC equipment is located in a train dispatcher's office.

The Carrier raises a further question of the authority of this Board to resolve the issue. It asserts that the matter involves a jurisdictional dispute between the Order of Railroad Telegraphers and the American Train Dispatchers' Association and that this Board therefore has no jurisdiction to hear and decide said dispute.

The question of authority of the Board to hear jurisdictional dispute has come before this Board on many occasions. The consensus of opinions in these awards clearly indicate that the Board recognizes it is without authority to pass upon these disputes.

In Award 4452 (Referee Carter) the Board outlined its reasoning for the holding that it lacked jurisdiction and stated that the matter involved a jurisdictional dispute. It remanded the case.

In Award 4768 (Referee Stone) the Board pointed out that when the duties were originally assigned to the two crafts, CTC was not in operation. Hence, it determined that the proper assignment of CTC duties constituted a jurisdictional dispute and cited the holding in Award 4452.

Awards 8143 (Referee Elkouri) and 9209 (Referee McMahon) involve the same parties as the instant dispute and a similar factual situation. Both awards refer to Awards 4452 and 4768 and concur in the opinions therein. The Board in both cases (between the same parties) finds that a jurisdictional dispute exists and determines that it is without authority to hear and decide the matters. It accordingly remands the case to the interested parties for negotiation.

In addition to the above cited cases, the Board has remanded cases involving jurisdictional disputes in numerous cases which are not herein individually reviewed but are cited as support for the opinion herein, to wit: Awards 4769, 6224, 6825, 8458, 8460, 8544, 8660, 10303, 10725, 11161, 11821, 14341 and 14342.

It must be noted that the instant case presents the same question of jurisdictional dispute as in the above cited case.

The Board must conclude that the jurisdictional dispute in the instant case requires that it recognizes that it is without authority or jurisdiction

to hear and determine the instant claim. The matter should be remanded to the parties for negotiation and in case of failure, to the National Mediation Board which is the proper forum for final disposition.

In view of the fact that the determination has been made that a jurisdictional dispute exists, there is no need to discuss the issue raised by the Carrier relating to unnamed Claimants nor to dwell upon procedural matters connected therewith.

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 does not have jurisdiction over the dispute involved herein;

AWARD

Case remanded in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1966.