

Award No. 14461
Docket No. TE-12812

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 and Santa Fe Railway, that:

1. The Carrier violated the Agreement between the parties when on or about December 16, 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 Rowe, 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 work previously performed by the agent, an employee under the Agreement at Rowe, 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 agency position at Rowe, New Mexico, and, if there be no idle extra telegraphers, then the Carrier shall compensate the senior telegraph service employee 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 Rowe, New Mexico. In this office the Carrier maintained an agent-telegrapher who performed the work of operating switches and signals governing the move-

"February 20, 1961
135-192-22
135-192-22-1

Mr. D. A. Bobo, General Chairman
The Order of Railroad Telegraphers
208 Columbian Building
Topeka, Kansas

Dear Sir:

This has reference to your two letters of January 26, 1961, both of which carried your File No. 26-S-161, and requested that the time limit within which you have to appeal from my decisions of May 25, 1960 and September 23, 1960 on your two appeal claims, each of which you agree arose out of the alleged improper transfer of certain work from the Agent at Rowe, New Mexico to the Train Dispatchers at Las Vegas, be extended pending conference following the receipt of awards that are yet to be rendered by the Third Division in two of your appeal claims at Abajo and Isleta, New Mexico.

Since the claim for penalties presented in your appeal claim of March 15, 1960 in behalf of certain unidentified claimant employees was for

' * * * each and every eight hour shift that the work previously performed by employees under the Telegraphers' Agreement at Rowe, New Mexico is performed by means of the centralized train control machines operated by the train dispatchers at Las Vegas, New Mexico. * * * '

and included the Agent's eight-hour tour of duty at Rowe, your subsequent appeal claim of August 3, 1960, which also claimed penalties in behalf of some unidentified claimants for:

' * * * each and every eight-hour shift that the work previously performed by the Agent, under the Telegraphers' Agreement at Rowe, New Mexico is performed by means of the centralized traffic control operated by the train dispatchers at Las Vegas * * * '

is without question a duplication of the claim for penalties that was advanced in your appeal claim of March 15, 1960, at least insofar as concerns the Agent's former eight-hour shift, and I am therefore unwilling to grant the request contained in your two letters of January 26, 1961, so long as you refuse to recognize and withdraw the duplicate claim for penalties that was the subject matter of your appeal claim of August 3, 1960.

Yours truly,

/s/ L. D. Comer"

OPINION OF BOARD: After modified control equipment was placed in service on December 16, 1959, the work of manipulating levers for switches

at Rowe, 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 employe.

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 disputes has come before this Board on many occasions. The concensus 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 cases 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 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 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.