

Award No. 14652
Docket No. TE-13199

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk & Western Railway Company (Virginian Lines), that:

1. The Carrier violated the terms of an Agreement by and between the parties hereto at Sewells Point, Virginia, when on July 2, 3, 4, 5, 6 (twice), 19, 20, 23, 24, 25, 26, 27, 31 (twice), August 1 (twice), 2, 3, 4, 5, 6, 7 (twice), 8 (twice), 9 (twice), 10 (twice), 13, 14, 15, 16, 18, 23, 24, September 1, 7, 11, 13, 17 (twice), 18, 23, 28, October 3, 8, 19, 26, 28 (twice), and November 3, 1960, it permitted or required employes not covered by said Agreement to perform communication service formerly performed by and belonging exclusively to Telegraphers.

2. The Carrier shall, for each date upon which the violations as set forth in paragraph 1 hereof occurred, compensate the senior, idle, extra Telegrapher for a day's pay at the old Sewells Point pro rata rate; or in the absence of such the Carrier shall compensate the senior, regular assigned Telegrapher idle on his rest day or days in accordance with rest day rules.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement by and between the parties hereto effective September 1, 1945, and as otherwise amended.

Effective December 1, 1959, by Agreement, the Norfolk & Western Railway merged with the Virginian Railway. While the Norfolk & Western Railway controls the operation of the merged railroads, the Agreement hereinabove referred to continues in effect on that portion of the merged railroads formerly operated by the Virginian Railway Company and its employes as represented by The Order of Railroad Telegraphers.

The locale involved in this complaint is Sewells Point, Virginia. This station now on Carrier's lines was formerly a station location on the Virginian Railway. Prior to the merging of the Norfolk & Western with the

removed therefrom and assigned to employees not subject to its terms.'

Your Honorable Board has held in many decisions in passing judgment in connection with 'scope rule' disputes that work of a class covered by an agreement belongs exclusively to the employees upon whose behalf it was made and cannot be delegated to others without violating that agreement. The 'scope rule' of Supplement No. 13 (telegraphers) made it quite clear that telegraph and telephone (synonymous terms) communications of record belong exclusively to the telegraph craft then and now represented by the Order of Railroad Telegraphers. There has been no change down through the years. The scope rule in the instant case is no exception.

There can be no question but what the communication of record service now being performed by employees not covered by the Telegraphers' Agreement at Sewalls Point Yard Office is work coming within the scope of the Telegraphers' Agreement and belongs exclusively to employees coming within the scope of such agreement.

For the reasons above set out, our claim should be sustained."

Your Board with the Honorable Judge Curtiss C. Shake sitting as a member thereof in a well-reasoned decision adjudicated the foregoing described dispute by rendering Award No. 4811. For your ready convenience we quote the opinion of your Board in the following:

"OPINION OF BOARD: Effective November 22, 1948, Carrier abolished the three-trick telegrapher-clerk positions at Sewalls Point, Virginia, and transferred the functions of said positions to employees of other crafts. The claim is that the work previously performed by the displaced employees be restored to the Telegraphers' Agreement and that they be compensated for the monetary losses sustained.

Sewalls Point is in Norfolk, Virginia, and is the eastern terminus of the Carrier's railroad. The terminal extends over some seventeen miles, and includes various yards, junctions and industrial tracks. Prior to the action here complained of, three telegraph offices, with continuous service, were maintained in this terminal. These were at Sewalls Point, Carolina Junction and South Norfolk. Carolina Junction is 12.5 miles west of Sewalls Point and three points are connected by double track.

On January 16, 1946, automatic signals were placed in service throughout the terminal and train orders and clearance cards were thereupon dispensed with. However, considerable communication of record work appears to have been performed at Sewalls Point after 1946.

It is the Carrier's contention that a decline in the volume of business rendered imperative a reduction of its force at Sewalls Point in November, 1948; that such a reduction of its force might have been accomplished, either by adding more clerical work to the

telegrapher-clerks, which they could readily have absorbed, and abolishing one clerical assignment on each trick, or eliminating any necessity for telegraph work at the office; that no exclusive telegraph work remained at Sewalls Point in November, 1948; and that its conduct did not constitute any violation of the applicable agreement.

The general rule appears to be that the handling of messages in connection with train movements and communication messages, orders and reports required to be made a matter of record are ordinarily regarded as work belonging to telegraphers. See Award No. 4280. There are, however, many exceptions to this formula, and it may be noted that Rule 23 of the Agreement presently before us places limitations upon the exclusive right of telegraphers to handle train orders.

We have carefully examined the comprehensive data set out in the record as to the nature, character and extent of the work performed by the telegrapher-clerks at Sewalls Point prior to November 22, 1948 and that performed there by the clerical employees subsequent to that date, as well as that performed by the telegraphers at Carolina Junction both before and after November 22nd. From these records it appears that on a single day, since November 22nd, as many as a dozen or more communications of record pertaining, directly or indirectly, to train movements are handled at or from Sewalls Point. Typical of these transactions are the following: a train crew arriving at Sewalls Point registers its time of arrival and departure. This information is then telephoned by the clerical employees to the telegraphers at Carolina Junction who, in turn relay it to the dispatchers at Victoria. Records of these transactions are made at Sewalls Point, Carolina Junction and Victoria.

Prior to November 22, 1948, the data transmitted by the telegraphers from Carolina Junction to Victoria was sent by the Claimant-telegraphers from Sewalls Point directly to Victoria. The same result is now achieved by dispensing with the telegraphers at Sewalls Point and having the clerical workers employed there telephone the necessary information to the telegraphers at Carolina Junction. This, we think, is the decisive fact of this case, and fully answers the Carrier's argument that no work which belonged exclusively to the telegraphers has been dispensed with at Sewalls Point. While the work in controversy is not the handling of train orders, it does, in our judgment, amount to the handling of communications of record directly related to train movements; and it is conceded that prior to November 22, 1948, work of this character performed at Sewalls Point was handled exclusively by employees under the Telegraphers' Agreement.

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 and all the evidence, finds and holds:

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 Carrier violated the Agreement.

AWARD

Claim (1, 2 and 3) sustained."

Carrier's compliance with the Order of your Board based upon the Findings in Award 4811 re-established the Telegrapher positions at Sewells Point, Virginia.

Effective December 1, 1959, the Telegrapher positions at Sewells Point were again declared abolished and the work thereof transferred to employees outside the scope of the parties' Agreement. Thereafter, Yardmasters, train service employees, Clerks, etc., used the telephone to transmit and/or receive messages, consists and train reports (OS's) to or from the Operator at Carolina Junction and/or direct with the Train Dispatcher at Victoria. Thus re-establishing the same violative practice which precipitated the dispute resulting in Award 4811.

Again the petitioning Organization instituted claim on the same ground and for the same reason as those which figured in the dispute leading to Award 4811. This case is now in pendency before your Honorable Board in Docket TE-12773.

This brings us to the 53 claims involved in the current dispute. Since all other claims involved are essentially the same as those presented to your Board in the dispute resulting in Award 4811, and similarly are identical to those involved in the disputes now in pendency before your Board in Docket TE-12773, we pray your Board's indulgence by confining the facts and pleadings to those involved in claims under date of July 2, 3 and 4 as being representative of the property handling of all of the 53 claims involved in this presentation. We do this in order to eliminate to the extent possible the repetitious handling and the length of this submission. However, in the event your Honorable Board desires to examine each of the 50 other claims here presented, such claim files will be made immediately available upon request.

CLAIM OF JULY 2, 1960

Briefly, the facts in claim of July 2, 1960, are: At 3:50 P.M., July 2, 1960, Yardmaster Stewart at Sewells Point called the Telegrapher at Carolina on the telephone and transmitted the following message of record:

"Engine 132, Conductor Assaid and Engineer Barton, with two loads 21 empties pulled at 3:50 P.M., going to South Branch with No. 71's cars and will return to a Long Siding, pick up 29 cars and go to Portlock."

At 6:35 P.M., Yardmaster Stewart gave Carolina the following over the telephone:

"Engine 129, Conductor Johnson and Engineer Price, with 35 loads, 3 empties, South Branch switcher pulled at 6:35 P.M."

At 9:45 P.M., Yardmaster Stewart transmitted the following message to the Telegrapher at Carolina:

"Engine 132, Conductor Assaid and Engineer Barton, with 109 coal for Portlock left Sewells Point at 9:45 P.M."

The Employes on the ground:

"* * * this communication service, which was formerly handled by Telegraphers at Sewells Point prior to December 1, 1959, when Sewells Point positions were abolished, belonged exclusively to Telegraphers. Third Division Adjustment Board Award 4811 (ORT v. GN) established this fact when they ruled in favor of the Telegraphers in that case and ordered that positions be restored at Sewells Point and all monetary claims paid. The above-named violations are identical to those referred to in Award 4811."

instituted claim.

Attached hereto and made a part hereof as ORT Exhibits 1 (pages 1 and 2) — through 8 — July 2, 1960 — Claim — is the correspondence passed between the parties during the handling of this dispute on the property.

CLAIM OF JULY 3, 1960

Briefly, the facts in Claim of July 3, 1960, are: At 4:40 P.M., July 3, 1960, Yardmaster Stewart at Sewells Point, called the Telegrapher at Carolina on the telephone and transmitted the following message of record:

"Engine 130, Engineer Leland and Conductor Conner, with 119 coal pulled at 4:40 P.M. at Sewells Point for Portlock Yard."

At 10:05 P.M., Yardmaster Stewart transmitted the following message of record to the Telegrapher at Carolina:

"Engine 126, Engineer Barton and Conductor Assaid, with 77 coal for Portlock pulled at 10:05 P.M."

The Employes on the identical grounds set forth in connection with the claim of July 2, 1960, instituted claim.

Attached hereto and made a part hereof as ORT Exhibits 1 (pages 1 and 2) — through 8 — July 3, 1960 — Claim — is the correspondence passed between the parties during the handling of this dispute on the property.

CLAIM OF JULY 4, 1960

Briefly, the facts in Claim of July 4, 1960, are: At 4:00 P.M., July 4, 1960, Yardmaster Stewart at Sewells Point transmitted the following message of record to the Telegrapher at Carolina:

"Engine 130, Engineer Price, Conductor Johnson, with 115 loads pulled at 4:00 P.M. for Portlock."

At 6:30 P.M., Yardmaster Stewart transmitted the following message of record to the Telegrapher at Carolina:

"Engine 132, Engineer Steager and Conductor Gilbert, South Branch switcher pulled at 6:30 P.M. with 30 loads no empties."

The Employees on the identical grounds as set forth in connection with the July 2 Claim instituted claim in this dispute.

Attached hereto and made a part hereof as ORT Exhibit 1 (pages 1 and 2) — through 8 — July 4, 1960 — Claim — is the correspondence passed between the parties during the handling of this dispute on the property.

The foregoing attests that the subject matter of dispute in the July 2, 3 and 4, claims (representative of the 50 other claims in this presentation) have been handled on the property in the manner prescribed by law and the rules of procedure of your Honorable Board, but failed of settlement. The disputes are, therefore, appealed to your Honorable Board for adjudication.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Prior to December 1, 1959, Norfolk, Virginia was the eastern terminus of the Virginian Railway Company, and such terminal extended over about seventeen miles with various yards, junctions and industry tracks. Sewells Point, Carolina Junction, South Norfolk and South Branch are points located within Norfolk Terminal. Sewells Point is located at the east end of the terminal; Carolina Junction is located about 12.5 miles west of Sewells Point; South Norfolk is located about 0.6 miles west of Carolina Junction and South Branch is located about 2.3 miles west of South Norfolk. Telegraph offices were maintained at Sewells Point, Carolina Junction and South Norfolk, and at each of these points telegraphers were assigned around-the-clock. The duties of telegraphers assigned at Sewells Point consisted of sending and receiving consists of road trains arriving at Norfolk from the west and departing from Norfolk to the west, as well as sending and receiving various other types of messages and reports. Long Siding, Portlock, Fairmont Park, Lambers Point, Levine and Dalton and Bundy Lumber Company siding, which are points involved in some of the claims in this case, are also points located within Norfolk Terminal.

Sewells Point was the site of the former Virginian Railway Company's coal piers, where ocean-going vessels were loaded with coal. It was also the site of that Carrier's main yard operation, where incoming road trains were yarded and outgoing road trains were made up. Locomotive and car inspection and repair facilities were also maintained at Sewells Point.

Effective December 1, 1959, the former Virginian Railway Company was merged with the Norfolk and Western Railway Company. Following such merger the coal piers and locomotive and car inspection and repair facilities at Sewells Point were closed, and all such work was subsequently performed at the Norfolk and Western Railway's facilities at Lamberts Point, Norfolk, Virginia. Incoming and outgoing road trains of both the former Virginian and Norfolk and Western Railways have subsequently been handled in the Norfolk and Western Railway's yard facilities at Norfolk and no road crews have been dispatched from or relieved at the former Virginian Railway Company's facilities at Norfolk, Virginia. Subsequent to the merger, Sewells Point Yard has been used only for the receipt and delivery of merchandise shipments and for the storage of incoming coal shipments when such

shipments exceeded the capacity of the Norfolk and Western Railway's facilities at Norfolk. Occasionally, when the Norfolk and Western yards are congested, coal loads from the west are moved to and stored in Sewells Point Yard. When the congestion is relieved to the extent that such overflow shipments can be handled they are moved by yard crews from Sewells Point to Norfolk and Western facilities, all of which moves are made within the confines of Norfolk Terminal.

The changes described above eliminated the work of sending and receiving consists and other types of messages and reports concerning train movements which work was formerly performed by telegraphers at Sewells Point as set out above. Therefore, there being no further need for the services of telegraphers at Sewells Point, the positions of telegraphers at that point were abolished, and the telegraph office closed effective December 9, 1959.

Prior to the closing of the telegraph office at Sewells Point Yard conductors or yardmasters informed telegraphers at the various telegraph offices located within Norfolk Terminal or the dispatcher at Victoria, Virginia concerning movements by yard crews between Sewells Point and other points within Norfolk Terminal. When such information was furnished to a telegrapher, the telegrapher informed the dispatcher at Victoria concerning the movement. When such information was furnished the dispatcher at Victoria, the dispatcher informed telegraphers within Norfolk Terminal who were concerned with the movement. After the telegraph office at Sewells Point was closed, yard conductors and yardmasters continued to inform the dispatchers and telegraphers as set forth above concerning yard movements at Norfolk Terminal.

Also, it has always been the practice on the former Virginian Railway property for yardmasters and clerks to converse by telephone with dispatchers and/or telegraphers to give or receive information necessary to yard operation. Information concerning cars to be received at or dispatched from a particular yard is necessary in planning the work of the yard. Also, instructions to yard crews concerning the performance of their work, such as instructions to pick up or set off certain cars at a certain location within the yard, have always been issued to yard crews by yardmasters or clerks by telephone conversations either directly to the yard conductors or by relaying such instructions through telegraphers.

The Employees filed the following claims:

"1. The Carrier violated the terms of an Agreement by and between the parties hereto at Sewells Point, Virginia, when on July 2, 3, 4, 5, 6 (twice), 19, 20, 23, 24, 25, 26, 27, 31 (twice), August 1 (twice) 2, 3, 4, 5, 6, 7 (twice), 8 (twice), 9 (twice), 10 (twice), 13, 14, 15, 16, 18, 23, 24, September 1, 7, 11, 13, 17 (twice), 18, 23, 28, October 3, 8, 19, 26, 28 (twice), and November 3, 1960, it permitted or required employees not covered by said Agreement to perform communication service formerly performed by and belonging exclusively to Telegraphers.

2. The Carrier shall, for each date upon which the violation as set forth in paragraph 1 hereof occurred, compensate the senior, idle, extra telegrapher for a day's pay at the old Sewells Point pro-rata rate; or, in the absence of such the Carrier shall compen-

sate the senior, regular assigned telegrapher idle on his rest day or days in accordance with rest day rules."

The Carrier declined the claims.

OPINION OF BOARD: The parties, agreement, and issues are identical with those in Docket No. TE-12773, Award No. 14651. Our decision therein will accordingly control.

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 has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1966.