



Award No. 14868

Docket No. TE-13391

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD COMPANY
(Western District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central (Western District), that:

1. The Carrier violated the Agreement between the parties when on December 20, 1960, it declared the following full-time positions abolished:

Second shift, Switchtender-Operator, East Gary, Indiana
3 P. M. to 11 P. M.;

Third shift, Switchtender-Operator, East Gary, Indiana
11 P. M. to 7 A. M.;

Rest day relief position, East Gary, Indiana,

resulting in the improper displacement of employees to such positions.

2. The Carrier is causing daily recurrent violations of the Agreement by requiring members of other crafts to perform duties definitely relegated to the members of The Order of Railroad Telegraphers as specified in our Scope Rule.

3. The Carrier shall compensate G. M. Ressmeyer, K. D. Hanft and B. G. Gray, who were improperly displaced from their positions, as shown in paragraph 1 hereof, as provided in Article 13 of the Agreement, commencing on December 20, 1960 and continuing each day thereafter until the violation is corrected.

4. The Carrier shall compensate three senior idle employees, extra in preference, on Seniority District No. 7, each in the amount of a day's pay on each day beginning on December 20, 1960, and continuing daily thereafter until the violation is corrected.

5. In addition, the Carrier shall compensate P. A. Keeling, the present incumbent first shift Operator, East Gary, Indiana, or her successors, according to Article 5 of the present Agreement for each

individual violation as specified in paragraph 2 hereof, and continuing until the violation is corrected.

6. The Carrier has abolished the positions and transferred the work to the train crews, who are not covered by our Agreement. The train crews are required to encroach recurrently upon Class CH duties as specified in the current Agreement, in that they (train crews) use the telephone to transmit and receive information, and handle switches normally and traditionally handled by the incumbents of the positions under our Agreement.

7. The right is reserved to examine the Carrier's records to determine the amount due each claimant.

EMPLOYES' STATEMENT OF FACTS: At East Gary, Indiana, on December 20, 1960, the Carrier declared the following full time positions would be abolished:

Second trick operator, East Gary, Indiana, hours 3:00 P. M. to 11:00 P. M.
Third trick operator, East Gary, Indiana, hours 11:00 P. M. to 7:00 A. M.
Rest day relief operator, East Gary, Indiana.

In general, on eastbound moves at this location it is necessary to handle two switches and a time release. On westbound moves four switches and two time releases must be operated when trains are entering or leaving the Joliet Branch.

The Carrier put the following bulletins into effect:

"NEW YORK CENTRAL SYSTEM

OFFICE OF SUPERINTENDENT
Chicago, Illinois

WESTERN DIVISION
DATE: December 16, 1960

BULLETIN ORDER NO. 52

Time Table No. 8

PORTER-IVANHOE SUB-DIVISION

JOLIET SUB-DIVISION

ALL CONCERNED:

Effective Tuesday, December 20, 1960.

East Gary:

Open daily 7:01 A. M. until 3:01 P. M.

East Gary open as register office 7:01 A. M. until 3:01 P. M.

Newly installed block telephones located on northwest corner of East Gary Station and on north side of tracks at East cross-over west side of Ripley Street in operators' shanty will be in service.

/s/ R. W. Lang
Transportation Supt.

Date January, 1961	No. of Trains During Second Shift Hours	No. of Trains During Third Shift Hours
8	1	1
9	1	None
10	1	1
11	1	None
12	1	None
13	2	None
14	1	1
15	1	None
16	2	None
17	1	1
18	1	None
19	3	None
20	2	None
21	2	None
22	2	None
23	None	None
24	1	1
25	2	None
26	1	None
27	2	None
28	2	1
29	2	None
30	None	None
31	1	None
<hr/>		<hr/>
37 trains on 25 days — No trains on 6 days		8 trains on 8 days — No trains on 23 days

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends that Carrier violated the Agreement when it abolished second, third and relief day Switchtender-Operator full time positions, resulting in improper displacement of employees entitled to such positions. Claim is made for the three displaced employees; three senior idle employees, extra in preference; and the present incumbent first shift Operator. The Organization bases these claims on the fact that when the positions were abolished, telegraphers' work was then performed by train crews not covered by the agreement. This work included the use of the telephone to transmit and receive information, and the handling of switches heretofore handled by position incumbents.

It is well established on this Board that the Carrier has the prerogative to conduct its business in a manner prescribed by good business practices

(Award 13690, O'Gallagher), and to determine the work to be performed and the time of its performance (Award 11994, Seff), and to determine the number of employes (Award 13346, Hutchins), and positions (Award 13525, Hamilton), necessary to its operation. Therefore, in the absence of proof that a substantial amount of work remained to be performed, Carrier herein had the right to abolish the second, third and relief position in this matter. The burden of proof in this regard lies on the employee. Not having met the burden of proof, there is no merit to claims 3, 4, 6 and 7 herein.

This leaves us with consideration of Claim No. 5 herein, requiring interpretation of the Scope Rule. In this agreement the Scope Rule is general in nature, and does not purport to describe or define the particular work in dispute. Therefore, the traditional custom and practice on the property is controlling in this issue. It is the employees' position that Carrier has recognized the right of telegraphers to the handling of operator-switchtender work at East Gary by negotiating positions at that location. A review of prior awards reveals that this contention is correct. Prior awards concerning similar disputes on this property have, without exception, upheld Claimant's right to the work involved in this case. Award No. 5524 (Whiting), which was cited by Special Board No. 137 in Award No. 17 upheld a similar claim on this property. Also see Special Board No. 137, Awards Nos. 18, 34, 38 and 52 — all from this property — sustaining similar claims.

The principle involved in the awards cited is identical with the issue herein. Therefore, based upon the holdings involving this property in prior awards of this Board and Special Board No. 137, Claim No. 5 herein should be sustained.

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 to the extent shown by the Opinion.

AWARD

Claim (5) sustained. Claims (3), (4), (6), and (7) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1966.

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