

Award No. 15402

Docket No. TE-13694

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago and St. Louis Railroad, that:

1. Carrier violates the terms of an Agreement between the parties hereto at MC Junction Yard Office, Toledo, Ohio by purporting to abolish the third shift operator clerk's position thereat without in fact discontinuing the work thereof and by assigning said work, namely blocking and OS'ing (reporting) trains over the telephone to employes outside the scope of the parties' agreement.

2. Carrier also violates said Agreement when it removes therefrom the work described in paragraph 1 hereof from the first and second shift operator-clerk's positions at MC Junction Yard Office and in the manner described in paragraph 1 hereof assigns its performance to non-covered employes.

3. Carrier shall, because of the violations set out in paragraph 1 and 2 hereof, compensate the senior idle telegrapher, extra in preference, on the Clover Leaf Seniority District, a day's pay (8 hours) for each date commencing May 31, 1961, and for each date thereafter so long as the violation here complained of continues.

4. Carrier shall, in addition to the foregoing, compensate each employe improperly displaced by reason of the Carrier's abolishment of the third shift operator-clerk's position at MC Junction Yard Office, for any loss of wages and/or expenses incurred because of Carrier's violative act.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective January 1, 1959, and as amended.

written by the night yardmaster at MC Junction Yard, the General Yardmaster, the Chief Yard Clerk, and a former General Yardmaster attesting to the practices in effect regarding the New York Central yard crew movements, both before and since the abolishment of the third trick telegrapher position.

The claim here in dispute was initiated by the Employees' General Chairman in letter dated July 5, 1961, copy of which is attached as Carrier's Exhibit G. The handling of the claim on the property was as follows:

Carrier's Exhibit H — July 17, 1961 — Denial of Claim, Superintendent to General Chairman.

Carrier's Exhibit I — August 10, 1961 — Appeal, General Chairman to General Superintendent.

Carrier's Exhibit J — October 3, 1961 — Denial of Appeal, General Superintendent to General Chairman.

Carrier's Exhibit K — October 12, 1961 — Appeal, General Chairman to Director of Personnel.

Carrier's Exhibit L — December 6, 1961 — Denial of Appeal, Director of Personnel to General Chairman.

Carrier's Exhibit M — December 28, 1961 — Letter, General Chairman to Director of Personnel.

Carrier's Exhibit N — January 11, 1962 — Affirmation of Denial, Director of Personnel to General Chairman.

(Exhibits not reproduced.)

OPINION OF BOARD: The instant claim arises out of the abolishment of the third shift telegrapher position at Carrier's MC Junction Yard Office, Toledo, Ohio, when Centralized Traffic Control was extended to a point between Gould Tower and MC Junction on May 31, 1961. Petitioner contends that the work of the abolished position continued and was re-assigned by Carrier to employees outside the scope of the Agreement between the parties. Petitioner seeks compensation for the "senior idle telegrapher, extra in preference," on the Clover Leaf Seniority District and in addition thereto compensation for each employee improperly displaced by reason of the Carrier's abolishment of the third shift operator-clerk position at MC Junction Yard Office for any loss of wages and/or expenses incurred because of Carrier's actions.

In the first instance, Carrier contends that the Claim must be dismissed because both paragraphs (3) and (4) thereof are invalid under Rule 32 of the Agreement (Article V of the August 21, 1954 National Agreement) and place the burden of developing the claim on the Carrier. It is well established that the Organization has the burden of proving the identity of any employees involved in claims brought to the Board.

Here, the Claimants are not named. Paragraph (3) of the instant claim describes the Claimant as "the senior idle telegrapher, extra in preference on the Clover Leaf Seniority District," which is sufficiently descriptive to be readily ascertainable. (Award 9205.) However, paragraph (4) of the claim is

patently deficient in setting out who as Claimants are involved and must be dismissed. Awards 12739 and 14468.

As to the merits of the dispute, the record reveals that prior to May 31, 1961, telegraphers were employed on a continuous basis at MC Junction and the operation of trains, including yard and transfer movements, between MC Junction and Gould Tower were controlled by a manual block system. Telegraphers at MC Junction communicated with those at Gould Tower, furnished crews of westbound trains and yard engines with Clearance Forms "A" at MC Junction Yard Office, and maintained records of all train passings, known as "Form 426."

On May 31, 1961, Centralized Traffic Control was extended to a point between Gould Tower and MC Junction. Simultaneously, the Manual Block operation was eliminated and all movements between Gould Tower and MC Junction are now made under C. T. C. Rules. The position of third track telegrapher also was abolished on the same date and a telephone was installed at the west end of the yard near the MC crossing.

When through trains or yard engines now are ready to leave MC Junction a member of the crew contacts the telegrapher at Gould Tower and informs him that the train awaits signal permission to depart. The telegrapher at Gould Tower then clears the signal to indicate "proceed" as soon as conditions over the single track permit such movement.

The parties are in basic disagreement concerning the type of message transmitted by members of train crews over the newly installed telephone to the telegrapher at Gould Tower. Petitioner contends that such calls result in "permission" being granted to trains to move over the approximately 685 feet of single track, which it contends is the equivalent to "blocking" authority. Carrier denies that any message, constituting train orders or OS'ing trains as alleged by Petitioner, is transmitted or received by an operator at Gould Tower and that such phone calls merely inform the operator that the train is ready, the actual movement being controlled by the C. T. C. signal.

The record further discloses that effective May 31, 1961, the use of Clearance Form "A" was discontinued insofar as yard movements are concerned but that crews of westbound road trains, originating at MC Junction Yard, still continue to secure such forms without block information being shown thereon. The arrival and departure records of road trains were continued but all road trains depart during the hours of the first and second track telegraphers, who continue to prepare and maintain all such clearance forms and train records.

It also should be noted that all operations, including the 685 feet here involved, as well as the main yard lead to the north, are under yard rules, which permit movements only at a speed that would permit stopping within half the range of vision. No record is required by Carrier of crew calls to the operator at the Gould Tower for signal permission to move and Carrier avers that the practice in dispute is engaged in all over the Carrier's system.

This Division has consistently held that the use of the telephone is not reserved exclusively to employees covered by the Telegraphers' Agreement. Therefore, Petitioner must establish that the type of message transmitted is

exclusively reserved to them. The Scope Rule of the controlling Agreement is general in nature and Petitioner has the burden of establishing such exclusivity through practice, tradition or custom.

Petitioner asserts that the telephone conversations between members of train crews and the telegrapher at Gould Tower constitute verbal communications regarding train movements, which are recorded. Examples of such communications, immediately following the change in operations, were introduced in evidence by Petitioner. However, Carrier contends that the recordation of such information was not required and was discontinued when brought to the Carrier's attention.

Both parties have cited awards of this Division involving previous disputes between them. The facts and particular circumstances of each have been carefully considered.

In the instant case, there is no showing that the work in question was performed exclusively by telegraphers throughout the Carrier's system. Carrier avers that the use of the phone in the manner here disputed is in compliance with Carrier's operating Rule 544 and is no different than the use of telephones at other locations controlled by Centralized Traffic Control throughout Carrier's entire system. There is no presumption of exclusivity and Carrier has offered probative evidence refuting Petitioner's claim that the disputed work is by its nature of a type reserved to telegraphers over the Carrier's system. Accordingly, we must find that the Petitioner has failed to prove that the transmission of messages by telephone of the type involved in this dispute constitutes work exclusively reserved to telegraphers on this property. (Awards 14446, 12356, 11592 and others.)

Also involved in this dispute are the yard movements of New York Central Yard engines from Field Avenue to MC Junction. Permission for such moves is secured by Central crews through telephone communications with the Yard Office and whoever answers the telephone furnishes the crew with the necessary information. Telephones connected with the Yard line are located on the desks of the Yardmaster, Yard Clerk and telegraphers at the MC Junction Yard Office but the decision as to what track or tracks are to be used rests with the Yardmaster or Yard Clerk. The telegraphers merely relay such information and no record is required of such New York Central movements. The record supports Carrier's contention that no basic changes were made in this operation when the C. T. C. territory was extended and the position of third track telegrapher abolished.

Finally, Petitioner asserts that certain clerical work incidental to the other duties of telegraphers has been improperly assigned to others outside the scope of the Agreement as a result of the changes herein before discussed. Petitioner has failed to establish an exclusive right to such clerical work based on tradition, custom or practice on the property through competent evidence. Absent such proof, we must find that the transfer of such clerical work to clerical forces did not violate the contract.

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

Paragraphs (1), (2) and (3) of the Claim are denied.

Paragraph (4) of the Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March 1967.