

Award No. 16272
Docket No. TE-14469

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway System, that:

Carrier violated Article 1, Scope, of the Telegraphers' Agreement when commencing on February 7th, 1962, and continuing thereafter Monday through Saturday of each week it caused, required or permitted Bridge Foreman Frank East, Section Foreman Earl Griffith and Section men Mr. Smith and Mr. Ooten, employees not covered by the Telegraphers' Agreement to communicate with the Train Dispatchers by use of the Company telephone, secure information of record regarding train movements through Twenty-five and Twenty-six Tunnels and that they then pass this information on to the crews working for Cowan Construction Company in and around the tunnels and have crews to clear the tracks for trains to pass in doing so the bridge foreman, section foreman and section men are performing block operators duties and that Telegraphers have performed block operators duties since time immemorial it is work that belongs exclusively to Telegraphers given them under the Scope 1 Rule of the Telegraphers' Agreement and also by tradition.

Carrier shall compensate H. C. Miller; D. E. Jeffers, R. D. Wilson, W. H. Green, R. S. Logan, N. Whitaker and G. P. Storey in accordance with Rule 1, Scope, at the rate of pay \$2.435 per hour for each and every day with overtime for over 8 hours and Saturday at one and one-half rate of pay, \$3.6525 per hour commencing on February 7th, 1962, and continuing thereafter so long as such work is performed by an employee not covered by the Telegraphers' Agreement the claimants herein shall be compensated in the same manner for all subsequent dates the violation of the Agreement is permitted.

This is a continuing claim.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.

* * * * *

3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimants or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient."

OPINION OF BOARD: Late in 1961 Maintenance of Way employees were used in connection with the enlargement of tunnels 25 and 26. Some of these individuals used the telephone to communicate with train dispatchers to ascertain the approach of trains in order to clear the tunnels of working personnel. The Organization filed the instant claim alleging this to be block operators work which it claims is reserved to telegraphers by the Scope Rule.

It asserts further that since this was a continuing violation this work claim was timely filed, and should be awarded to those employees listed therein.

The Carrier asserts that this claim does not arise from a continuous violation, that the Employees failed to proceed with an earlier claim in timely fashion, and that even if the claim was procedurally correct, it must fail on its merits since the employees concerned were acting in the same fashion as they had for many years regarding train movements through tunnels, and cannot be held to have performed work belonging to the Telegraphers.

Rule 1 — Scope states that the parties agreement applies to all block operators.

In the instant case however, there is insufficient proof that the tasks performed were indeed the work of a block operator. Accordingly we find the Employees' claim lacks merit and that therefore there is no need to consider the other issues raised in this case.

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 Employee 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 2nd day of May 1968.