



Award No. 16303
Docket No. TE-14924

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, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad that the Carrier violated and continues to violate the parties' Agreement by requiring and permitting conductors to perform blocking services at Westfield, Massachusetts, at times when the regularly assigned operators are off duty, available but not called, on the dates shown in each of the five claims listed below:

CLAIM NO. 1

January 8 and 29, 1963. As a consequence of these two violations, Carrier shall compensate Mr. J. R. Audette, regularly assigned operator at Westfield, one call payment (3 hours pro rata) for each date. (Carrier File: Railroad Docket 9502 A-D.)

CLAIM NO. 2

January 3, 4, 7, 9, 10 and 11, 1963. As a consequence of these six violations, Carrier shall compensate Mr. A. P. Deshais, operator assigned to Westfield, one call payment (3 hours pro rata) for each date. (Carrier File: Railroad Docket 9502-D.)

CLAIM NO. 3

January 30 and 31, 1963. As a consequence of these two violations, Carrier shall compensate Mr. R. W. Nimke, operator assigned to Westfield, one call payment (3 hours pro rata) for each date. (Carrier File: Railroad Docket 9502 A-D.)

CLAIM NO. 4

February 5, 6, 7 and 8, 1963. As a consequence of these four violations, Carrier shall compensate Mr. P. D. Howard, operator assigned to Westfield, one call payment (3 hours pro rata) for each date. (Carrier File: Railroad Docket 9502 A-D.)

CLAIM NO. 5

Commencing Tuesday, March 5, 1963, and on subsequent date or dates. As a consequence of violations occurring on March 5 and 6, 1963, and any subsequent date of performance of such service by train service employees when operator at Westfield is available and not called, Carrier shall compensate Mr. J. R. Audette, or any successor to Mr. Audette assigned to such position, a call payment (3 hours pro rata) on each occasion on which such violations occur, until the condition is corrected. (Carrier File: Railroad Docket 9533.)

EMPLOYEES' STATEMENT OF FACTS: Carrier maintains a block and train order station at Westfield, Massachusetts. This station is manned by a one shift operator's position, which is assigned Monday through Friday, 9:45 A.M. to 6:45 P.M. (one hour lunch included). This position, in the five day category, is not covered by relief on the Saturday and Sunday rest days.

On each of the claim dates specified in the Statement of Claim, a conductor performed blocking service prior to the respective claimant's starting time. A breakdown of the instances involved is listed below in date order:

Claim No.	Claimant	Date	Time of Blocking
2	Deshais	1-3-63	7:20 AM
2	Deshais	1-4-63	8:30 AM
2	Deshais	1-7-63	8:30 AM
1	Audette	1-8-63	7:00 AM
2	Deshais	1-9-63	7:15 AM
2	Deshais	1-10-63	8:45 AM
2	Deshais	1-11-63	8:15 AM
1	Audette	1-29-63	7:50 AM
3	Nimke	1-30-63	7:20 AM
3	Nimke	1-31-63	8:00 AM
4	Howard	2-5-63	7:10 AM
4	Howard	2-6-63	7:25 AM
4	Howard	2-7-63	6:25 AM
4	Howard	2-8-63	8:05 AM
5	Audette	3-5-63	8:30 AM
5	Audette	3-6-63	6:45 AM

In each instance above shown, a claim for a call payment (three hours pro rata) has been filed on the charge of Agreement violation when employees not covered thereunder performed blocking service. Carrier has denied the claim on the basis that "the block was cleared [by conductors] at hours that no operator's position previously existed at that station." (Quotation from the Superintendent's letters in each claim case.)

The foregoing facts are not in dispute, as evidenced in the correspondence exchanged between the parties, which is attached hereto and identified

Copy of General Chairman Marr's appeal in Claims 1 to 4 is attached and marked as Carrier's Exhibit A.

Carrier's decision to General Chairman Marr on these four claims made under date of June 6, 1963, is attached and marked as Carrier's Exhibit B.

Claim No. 5 was handled as a separate case from Docket No. 9502 A to D. Attached is Carrier's Exhibit C, copy of District Chairman Wolcott's claim of April 21, 1963.

Attached is Carrier's Exhibit D, copy of Superintendent MacLeod's decision of May 14, 1963.

Attached is Carrier's Exhibit E, copy of General Chairman Marr's appeal dated June 5, 1963.

Attached is Carrier's Exhibit F, copy of Carrier's decision dated August 20, 1963 (Railroad Docket 9533).

Carrier inadvertently stated in its decision to the General Chairman that Claim No. 5 covered August 5 and 6, 1963. Under date of August 30, 1963, General Chairman Marr brought this to the carrier's attention. His letter is attached and marked as Carrier's Exhibit G. Also under date of August 30, 1963, General Chairman Marr wrote protesting decision in Docket 9533. This letter is attached and marked as Carrier's Exhibit H.

Under date of September 18, 1963, Carrier wrote to General Chairman Marr, advising him that Claim No. 5 was limited to the dates March 5 and 6, 1963. Letter is attached marked as Exhibit I.

General Chairman Marr's reply, dated September 19, 1963, attached and marked as Exhibit J.

With the exception of Claim No. 5, there is no dispute between the parties with respect to procedure followed in progressing claim.

In Case No. 5 there is a dispute as to whether the claim is limited to the two dates specified — March 5 and 6, 1963 — or is a continuing claim for subsequent dates.

Copy of the Agreement between the parties dated September 1, 1949, is on file with your Board and is by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This consolidated claim arose at Carrier's station in Westfield, Massachusetts, where a single five day position of operator-clerk is regularly assigned Monday through Friday with regular hours between 9:45 A.M. and 6:45 P.M. On each of the specified claim dates, a conductor performed block service by reporting Train NY-2 clear of the block at Westfield to the telegrapher located at Granby or at Tower 75 at New Haven. The disputed work was performed prior to the regular starting time of each Claimant, but Petitioner contends that the Claimants should be paid a call in each instance as reparation for being deprived of an opportunity to perform such work under Article 7 of the Agreement.

Carrier contends that the Scope Rule of the effective Agreement is general in nature, and that Petitioner has failed to establish that telegraphers have an exclusive right to the disputed work through practice, custom and tradition.

Examination of the record reveals that the location of this consolidated claim is at the junction where the Boston & Albany Railroad crosses the Carrier's line. Historically, the record reveals, that an Assistant Agent-Operator was assigned at Westfield by the Carrier between 1917 and 1930, when the position was abolished and the work transferred to an interlocking plant operated by the Boston & Albany Railroad. This facility was manned by an employe (telegrapher) of the Boston & Albany Railroad from 6:00 A. M. to 10:00 P. M. daily, except Sunday. Effective August 1, 1962, the interlocking plant was discontinued, and an automatic cross-over installed. Simultaneously, this Carrier established the present position of operator-clerk at Carrier's New Haven Freight Office in Westfield.

The Petitioner urges that telegraphers at this station are entitled to perform the work of clearing the block outside of their assigned hours under the Scope Rule of the Agreement and pursuant to prior decisions of this Division and Special Board of Adjustment No. 306, which have interpreted the applicable provisions of the Agreement in earlier disputes between these parties involving similar issues.

The Scope Rule of the effective Agreement between the parties is general in nature, and does not detail work which employes will perform. This Division has consistently held under similar Scope Rules that Claimants have the burden of establishing through competent evidence that disputed work is historically and customarily performed by a particular classification of employes to the exclusion of all others. Awards 14494, 15633, and others. Carrier has offered competent evidence which establishes that employes other than telegraphers have been used to call operators in control of the blocks under various conditions throughout its system. Consequently, we find that Petitioner has failed to sustain its burden of proof under the Scope Rule of the Agreement.

Petitioner also relies on a series of Awards issued by this Division and a Special Board of Adjustment to support its position that telegraphers are entitled to the disputed work because Carrier formerly assigned telegraphers to the station at Westfield during hours when the disputed blocking work was performed by a conductor on the dates of claim.

Carrier denies that telegraphers were ever assigned to work at the Westfield station during the particular hours when the disputed work was performed by a conductor on the dates of claim; that the former operator position at Westfield was abolished over thirty years prior to the instant dispute when the work of said position was transferred to an interlocking plant operated by a different Carrier; and that no position under the Scope of the effective Agreement between the parties herein existed at Westfield between 1930 and August 1, 1962, because all work which might be required at that point was performed by employes of the Boston & Albany Railroad pursuant to a separate Agreement.

Our Award 5431, in part, determined that the Scope Rule of the effective Agreement in this case was general in nature, and that telegraphers did

not have an exclusive right to similar communication work outside of the regular hours of their respective assignments. This determination has been reaffirmed by most subsequent awards relied on by the Petitioner. Subsequently, Award 13696 was issued by this Division, which analyzed earlier Awards on this subject and stated as follows concerning the issues involved in the instant controversy.

"Award 6800 is still authority on this property, and requires the payment of a call unless it is shown that on the dates and during the hours indicated, the work involved had never been performed by telegraphers as stated in Award 8133. He who claims the exception to the general rule has the burden of proof. There is no such proof here. Carrier's assertion that there has been no operator on this track for thirty years does not satisfy the need to show that the work involved had never been done by telegraphers."

Analysis of our Award 13696 as well as Award No. 29 of Special Board of Adjustment No. 306 discloses that telegraphers had formerly been assigned to duty during the particular hours when the disputed work was performed by other than telegraphers under the Scope of the Agreement.

In the present case, Carrier denies that any telegraphers formerly assigned to duty at Westfield had ever performed blocking service during the particular hours indicated in the Statement of Claim. Petitioner asserts that the Assistant Agent-Operator position in existence at Westfield between 1917 and 1930 regularly worked 9 to 10 hours; however, no probative evidence has been introduced to support this contention nor establish what exact period of each day was covered by this position. Thus, we are confronted with conflicting assertions as to material facts involved in this dispute. The mere fact that an Assistant Agent Operator was formerly assigned to this location neither establishes that his regular hours included the particular hours during which the disputed work was performed by a conductor nor that this former incumbent performed blocking services at Westfield.

Petitioner further urges that the operator employed by the Boston & Albany Railroad to staff the interlocking plant between 1930 and August 1, 1962 must be considered a "joint employe" of both Carriers, and that his regular assigned hours of service should be treated as those of an employe of this Carrier for the purpose of determining whether or not the disputed work was performed within the hours of a previous position. The record does not reveal the exact nature of the duties assumed by this employe of the Boston & Albany Railroad which were formerly performed by the abolished Assistant Agent-Operator position at Westfield in 1930. Furthermore, this employe is not subject to the provisions of the effective Agreement involved in this case, including the Scope Rule. We are not concerned here with Carrier's right to transfer specific functions of an abolished position to an employe of another Carrier pursuant to an established arrangement. Therefore, we must conclude that this Carrier employed no telegraphers at Westfield between 1930 and the creation of a new position of operator-clerk with assigned hours from 9:45 A. M. to 6:45 P. M., Monday through Friday, effective August 1, 1962.

In view of the foregoing, we find Awards 7, 10 and 18 of Special Board of Adjustment No. 306 are most applicable in this case as the Petitioner has failed to establish that conductors cleared the block during the assigned hours of any former operator at Westfield. Accordingly, the claim must be denied.

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 17th day of May 1968.