



Award No. 16304
Docket No. TE-16406

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the New York, New Haven and Hartford Railroad Company, that:

1. Carrier violated the Agreement between the parties when on February 2, 9, 16, March 2, 8, 16 and 23, 1965, it permitted or required employes not covered by the Agreement to perform telephone block operator work of clearing the block at Waterbury, Connecticut.

2. Mr. A. J. Barkauskas, regularly assigned to the 3:00 P. M. to 11:00 P. M. Operator's position at Waterbury, Connecticut, shall be paid for a three (3) hour call on each date that Conductors cleared the block at Waterbury, Connecticut outside of his assigned hours, seven (7) calls.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between The New York, New Haven and Hartford Railroad Company and this Union, dated September 1, 1949, as amended and supplemented is available to your Board and by this reference is made a part hereof.

These claims were presented and progressed in accordance with the time limits provided by the Agreement up to and including appeal and conference with the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

The portion of the Carrier involved in these claims is operated by timetable, train orders and manual block system.

Conductors of freight trains arriving at Waterbury, Connecticut after the assigned hours of Telegrapher-Clerk A. J. Barbauskas cleared the block by calling Signal Station 71 at Devon, Connecticut on the telephone and reporting that his train was clear of the block. Signal Station 71 is located some 15 miles from Waterbury. The dates and times involved in these claims are listed next.

Claims were initiated on behalf of Mr. Barkauskas for calls on February 2, 9, 16, 1965 and March 2, 8, 16, 23, 1965, and progressed through the prescribed channels on the property up to and including the undersigned.

Attached in exhibit form is a copy of the pertinent correspondence as follows:

- A - General Chairman's appeal in Claim No. 1.
- B - General Chairman's appeal in Claim No. 2.
- C - Carrier's decision in Claims No. 1 and 2.

Claims were denied on the property on the basis that it is a well established practice that the work of reporting the clearing to the operator in control of the block is not the exclusive work of a telegrapher.

Copy of the Agreement dated September 1, 1949, between the parties, as amended, and the National Non-Operating Agreement of August 21, 1954 are on file with this Board and are, by reference, made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This consolidated claim involves the same fundamental issue considered in Award 16303 but under somewhat different factual circumstances.

Claimant is the regular occupant of the 3:00 P.M. to 11:00 P.M. trick at Waterbury, Connecticut. On the dates of claim, conductors of freight trains arriving at Waterbury reported themselves clear to the operator in control of the block after the Claimant's assigned working hours. Claimant seeks compensation for a three (3) hour call on each date that conductors cleared the block at Waterbury, Connecticut outside of his assigned hours.

The record discloses that Carrier formerly maintained a tower at Waterbury, known as the Bank Street Tower, where Block Operators were employed on a continuous twenty-four hour basis. Approximately ten years prior to this dispute, the tower was closed and the particular telegrapher's position abolished. Simultaneously, the remaining duties of this abolished position were transferred to Carrier's block office and train order station, which is open seven days a week from 5:00 A.M. to 11:00 P.M. The disputed blocking service performed by conductors occurred at night while this facility of Carrier was closed.

The Scope Rule of the effective Agreement is general in nature, and Petitioner has failed to establish through competent evidence that telegraphers historically and customarily perform the disputed work to the exclusion of all other employees of Carrier under similar circumstances throughout Carrier's system.

Although the Carrier formerly employed telegraphers on a continuous basis to staff the Bank Street tower, this facility has been closed and such positions abolished for over ten years. The record reveals no evidence that Carrier has previously assigned employees to regular duty at the present Waterbury station between 11:00 P.M. and 5:00 A.M., when the disputed work was performed by conductors. Therefore, we find Awards 7, 10 and 18 of Special Board of Adjustment No. 306 persuasive in this case. Accordingly, we will deny the claim.

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 not violated by the Carrier.

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.