

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

NEW YORK CENTRAL RAILROAD
(Southern District)

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

1. The Carrier violated the terms of the agreement when on the dates listed below it required Mr. M. L. Sherer to assume the duties of the Yard Master, and refused to compensate him with the higher rate of pay which was the Yard Masters rate of pay, Yard Masters rate \$30.08. Operators rate \$20.92, both being daily rate of pay. October 2, 3, 6, 7, 8, 9, 10, 13, 14, 16, 20, 21, 29 and 30, 1963. November 6, 10, 13, 17, 18, 19, 21, 24, 25, 26, 27 and 28, 1963. December 1, 2, 3, 4, 5, 8, 9 and 10, 1963.

2. The Carrier violated the terms of the agreement when on the dates listed below it required Mr. D. M. Rogers to assume the duties of the Yard Master and refused to compensate him with the higher rate of pay which was the Yard Masters' rate of pay, Yard Masters' rate of pay \$30.08, Operators' rate of pay \$20.92, both being daily rate of pay. October 4, 11, 22, 25, 1963, November 1, 25, 29, 1963, December 6, 1963.

3. The Carrier shall now be required to pay Mr. M. L. Sherer, and Mr. D. M. Rogers the difference between the Operators' rate of pay and the higher rate which is the Yard Masters' rate, said difference being \$9.16 per day.

EMPLOYEES' STATEMENT OF FACTS: The Carrier declined abolished the third shift yardmaster position at "BN" yard, Bellefontaine, Ohio, and transferred the work of the third trick yardmaster to the operators on duty during the third shift. Claim was filed in behalf of operators M. L. Sherer and D. M. Rogers, who worked the third shift telegraph position at Bellefontaine, Ohio, and were required to perform the yardmasters' duties on the dates in question. The claim was for the difference in pay between the operators' rate and the yardmasters' rate of pay for each of the dates. Claim was appealed to

the highest officer and declined by him, and is now properly before your Board for final adjudication.

CARRIER'S STATEMENT OF FACTS: There is in effect an Agreement between the parties to this dispute dated February 1, 1962, a copy of which is on file with your Board, and by this reference is made a part hereof.

The operator-clerks involved in this claim were regularly assigned at "BN" Tower, Bellefontaine, Ohio:

M. L. Sherer -- 3rd trick -- Friday and Saturday off.

D. M. Rogers -- Relief -- Saturday and Sunday off.

Effective October 2 and continuing through December 10, 1963, all third trick positions in "BN" Yard, including yardmaster, yard crews, yard clerks, car inspectors and roundhouse employees, were abolished.

During this period, the second trick yardmaster, prior to going off duty at 11:00 P.M., programmed the work for the second trick yard crew if it had not completed work at 11:00 P. M. In addition, he prepared a list of tracks on which switch runs, terminating at Bellefontaine and arriving after 11:00 P. M., were to be yarded. This information was given to the operator-clerk at "BN," who, as he regularly does, relayed it to the train crews when they called on arrival.

Except for the changing of crews, Bellefontaine was merely an intermediate point for through freight trains during this period -- no pick-ups or set-offs being made. The trains were stopped on the main track and, after crews were changed, proceeded on their trip. This is what is commonly known in railroad parlance as being "main-tracked." The outbound crews for these trains were ordered by the train dispatcher through the operator-clerk, who gave the information to the crew dispatcher located at the Y. M. C. A., where the crews were stationed.

OPINION OF BOARD: During October 2 through December 10, 1963, Carrier abolished the third shift Yard Master position at Bellefontaine, Ohio. Claim is made in behalf of Operators M. L. Sherer and D. M. Rogers, occupants of third shift Telegraph positions at Bellefontaine, for compensation at the higher Yard Masters' rate of pay because they were required to do the work of the third trick Yard Master.

Petitioner contends that the work transferred to the Operators when the Yard Master position was abolished, was of a type normally performed by Yard Masters, and that such duties were not contemplated by the classifications of the Telegraphers' Scope Rule.

Carrier requests that this claim be dismissed because the Third Division does not have statutory authority to hear this dispute. It cites Section 3, First. (h) of the Railway Labor Act which restricts jurisdiction to disputes of certain classes of employees. Since Yard Masters are not included in this list, Carrier maintains the dispute is not properly before this Board. On the merits of the case Carrier argues that any of the work complained of could properly be required of Operators, for these duties are not reserved to any one craft exclusively. It points out that in the past at various locations, other employees as Clerks, Operator Clerks, and Agents, have performed this work, and

Bellefontaine Operators have performed all of the duties in question at one time or another. Furthermore, it asserts that the Operators did not do predominantly Yard Master work since they did not exercise independent judgment and initiative in making decisions concerning the making up and breaking up of trains departing or entering the yards. When necessary, the second trick Yard Master, prior to the close of his tour of duty, programmed the work of the third shift and charted the tracks on which switch runs were to be yarded.

With reference to the question of jurisdiction, we find that the Railway Labor Act in Section 3, First (h) confers jurisdiction on the Third Division over disputes involving Telegraph employees. Since the claim is made in behalf of Telegraph Operators, and involves their collective bargaining Agreement, this Board has the statutory authority to resolve this dispute.

In examining the work transferred to the Operators after the abolition of the third trick Yard Master position, we note that a substantial amount of this work falls under the category of Yard Master work. Although some of the duties are not exclusive to the Yard Master, and may have been performed by Operators or other crafts, the predominant Yard Master duties were now performed by the Operators of the third trick. All the work of the third shift Yard Master may not have been transferred to Operators but the additional responsibilities placed upon them were not contemplated by the Telegraphers' Agreement. It is not essential for an employee to perform all the duties and responsibilities of a higher rated position to be entitled to compensation at the higher rate.

For the reasons stated we hold that the Agreement was violated and allow Mr. Sherer and Mr. Rogers the difference between the Operators' rate of pay and the Yard Masters' rate for the dates stated in 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 Employee involved in this dispute are respectively Carrier and Employee 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 by the Carrier.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1968.

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