



Award Number 17439

Docket Number TE-15019

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES 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 System (Southern District), that:

1. The Carrier violated the parties' Agreement when on August 29, 1962, it declared abolished the first trick telegraph position at Van Wert Yard, Van Wert, Ohio, without in fact abolishing the work thereof, which was transferred to employees not covered by the scope of the Agreement, and/or employed by another railroad at Van Wert, Ohio, by Pennsylvania Railroad employees and at Latty, Ohio by NYC&StL Railroad (Nickel Plate Railroad).

A part of the communication work is being done by the clerk to the trainmaster. Also, the car inspector calls C. N. Tower (a Pennsylvania Railroad position) a mile away and tells him to O.S. trains out of the yard at a certain time.

2. The Carrier shall, because of the violations set out above, restore the work to the parties' Agreement.
3. The Carrier shall, in addition to the foregoing, compensate Mr. D. M. Smith in accordance with the provisions contained in Article 10 and all other applicable rules of the Agreement between the parties, for any loss of wages and additional expenses incurred by reason of the Carrier's violative act for each day that such violation continues.

Due to the fact that this is a continuing violation, this claim will commence on September 1, 1962.

4. The Carrier shall compensate any other telegraphers adversely affected by reason of the improper abolishment of the first trick telegrapher position at Van Wert Yard, Van Wert, Ohio (this claim shall also be effective September 1, 1962) under the provisions of Article 10 and any other applicable rules of the Agreement between the parties, for any loss of wages and amounts due such telegraphers to be determined by a joint check of the Carrier's records.

7:00 A.M.-3:00 P.M.—Saturday and Sunday rest days.

7:00 P.M.-3:00 A.M.—Tuesday and Wednesday rest days.

These 7-day operator-clerk positions performed the necessary miscellaneous clerical duties at the yard, along with OS'ing trains and other communication work. During the periods an operator-clerk was not on duty, the Pennsylvania Railroad operators located in "CN" Tower at Van Wert and the New York, Chicago and St. Louis Railway operators located in the tower at Latty, Ohio—13 miles north of Van Wert—OS'ed Carrier's southbound and northbound trains, respectively, departing Van Wert.

Account diversion of considerable of the traffic which formerly entered and departed Van Wert, which resulted in the abolishment of all pool freight assignments and left only two alternate day switch runs operating daily out of this point, the retention of one yard engine and one operator-clerk only were justified after August 29, 1962. At that time one yard engine was abolished, leaving one assigned to work 2:30 P.M.-10:30 P.M. The 7:00 A.M.-3:00 P.M. operator-clerk (Claimant Smith's assignment) was abolished and the hours of the 7:00 P.M.-3:00 A.M. operator-clerk were changed to 2:00 P.M.-11:00 P.M. with one hour for meal period, to coincide with the hours of the remaining yard engine. Since Claimant Smith was the junior of the two operator-clerks working at Van Wert prior to August 29, 1962, he chose to exercise displacement rights at Ansonia, Ohio—50 miles south of Van Wert—effective August 30, 1962. Upon retirement of the remaining operator-clerk at Van Wert (E. V. Wagonrod) on September 28, 1963, Mr. Smith returned to that point.

Following the abolishment of this one operator-clerk position, the Pennsylvania Railroad operators continued the practice, which had been in effect for 33 years, of OS'ing Carrier's southbound trains when no operator-clerk was on duty. All OS'ing of Carrier's northbound trains by the New York, Chicago and St. Louis Railway operators at Latty, Ohio, was discontinued effective December 11, 1962, when the interlocker at that point was made automatic.

Claim is progressed on the basis that Claimant Smith's position was improperly abolished, in that part of the work previously performed by him was turned over to the employees of other railroads and to other employees of the Carrier outside the craft of Telegraphers.

As clarification, attached is a rough sketch (Carrier's Exhibit No. 1) showing the territory and stations involved in this claim.

(Exhibits not reproduced)

OPINION OF BOARD: The operation of the joint facility at Van Wert, Ohio where the Pennsylvania Railroad has operated under Agreement an interlocker for many years combined with the operation of another similar arrangement, subsequently discontinued, by the Nickel Plate Railroad at Latty, Ohio, 13 miles away, has produced this grievance.

Allegations of fact by the parties are in contradiction and the burden of proof is not well sustained by either. It would be a simple matter to deny the claim herein due to the sparse and confused record, except for the letter of Carrier's representative dated May 10, 1963 (Employee's Exhibit 8), in which Carrier's General Manager reports agreeing that certain work of the abolished position remains and "if necessary, to perform this work

outside the hours of his assignment, the second trick operator-clerk will be given a "call" ".

In view of the nature of the record and in light of the above-quoted exhibit, this matter will be remanded to the property for further negotiation, with leave to return the same to this Board in the event of failure to agree.

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 claim should be remanded to the property.

A W A R D

Claim remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1969.