



Award No. 18936

Docket No. TE-15187

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

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 & Hartford Railroad, that:

1. Carrier violated the Telegraphers' Agreement schedule at New London, Connecticut, when, commencing May 15, 1963, and continuing to date of claim, it requires, permits or allows stationmasters (yardmasters), employees not subject to the terms of the Telegraphers' Agreement, to receive and copy communications of record including train lineups and information from conductors' reports (Form 1492-2) and to enter such information in Carrier records (daily log book).

2. Until the violative condition is corrected by assignment of employees under the Telegraphers' Agreement to each of three (3) eight hour shifts, seven days per week, Carrier shall compensate each of three idle extra operators on a day to day basis, such extra operators being:

G. A. Benard, R. R. Chaput, E. C. Crowell, R. A. Vincent,
J. A. Mack, H. G. Andrews, J. Machado, Jr., J. J. Hedrigan,
A. F. Reynolds, L. V. Cotnoir, R. D. McGrail, D. W. McCaw,
K. M. Awker, J. F. Rodgers, Jr., R. E. Johnson, D. Madeiros,
and C. K. Stiles.

3. In the event that no extra operator is found available, such regularly assigned employees as may be available on rest days shall be so compensated in accordance with the terms of existing Agreements.

4. The violative condition to be corrected by assignment of employees under the Telegraphers' Agreement to each of three eight hour shifts seven days per week for the purpose of copying all messages of record and performing work covered by said Agreement but currently performed by the stationmaster at New London.

EMPLOYEES' STATEMENT OF FACTS: Due to and following failure to settle this claim on the property, the General Chairman sent the file to the

Exhibits "B" and "B-1" — Decisions of Superintendent J. A. Gregg dated July 8 and 9, 1963, respectively, to Local Chairman R. B. Hoxie.

Exhibit "C" — General Chairman Marr's appeal of August 2 1963, to the undersigned in which it is alleged that the information complained of in the case was telephoned to the New London stationmaster by a train dispatcher at Boston and that a telegrapher should have been employed to copy the information at New London.

Exhibit "D" — Carrier's decision of October 31, 1963, denying the claim of the General Chairman on the ground that this information had long been copied by yardmasters at New London in the manner complained of.

Exhibit "E" — Statement of Yardmaster L. R. Duggan at New London attesting to the existence of this practice for a period of sixteen years.

Exhibit "F" — Statement of Yardmaster J. E. Finnegan attesting to the existence of this practice for a period of twenty years.

Exhibit "G" — Statement of Yardmaster H. F. Duggan attesting to the existence of this practice for a period of twenty-five years.

Exhibit "H" — Reply of General Chairman Marr dated November 14, 1963, in which he denies the existence of the practice.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Stationmasters at New London headquarters of Carrier copied information concerning trains moving east and west through that location. Conductors of the trains had dropped the information off at Guilford or Westerly Towers, which are respectively west and east of New London. When the Operators at these Towers phoned the information to the train dispatcher at Boston the Stationmaster at New London would listen and copy the information. The information consisted of train numbers, engine numbers, crew, number of locomotives, tonnage, empties and cars to be dropped off at New London by trains moving east or west from there. This information was entered in a log.

Claim is limited to the period May 15, 1963 to September 25, 1963, as the parties in September, 1963 settled the underlying dispute on the property. The dispute was settled by agreeing that the train dispatcher at Boston would telephone the Stationmaster at New London and advise him of the information he needed which would be limited to the number of cars in the train, the number of set offs or work to be done at New London and the approximate arrival time at that point. Thus we are concerned only with the request for payment for the period stated above.

There is no evidence in the record that there ever was an Operator (Telegrapher) employed or on duty at any time at New London headquarters. The Organization contends, however, that the Fort Yard Tower located adjacent

to the station at New London was the source of communications for New London and from that Tower the Stationmaster received information by telephone from the Operator or by messenger in lieu of telephone. It is alleged by the Organization that "Only information relative to trains working at New London within yard limits was required or furnished."

The Fort Yard Tower was destroyed by fire in 1958 and its functions were carried on in a temporary structure for a while until 1960 when the Tower was abolished and the interlocking transferred to Groton, about 1½ miles away. During the course of handling of the matter on the property one of the alternatives suggested by the Organization was that the information be provided by the Groton Tower rather than the more distant Towers at Guilford or Westerly. Thus at one point of the handling it seemed the case involved transmissions of information rather than receipt of copying. It is noted that during these efforts to settle on the property no attempt was made to limit the amount of information which could be transmitted from Groton for copying by the Stationmaster at New London.

In any case whether transmitted from Fort Yard, Guilford, or Westerly Towers or from Boston it is clear that Stationmasters copied information concerning train movements at New London. The fact that more information was copied than the Organization feels appropriate does not negate the fact that the Stationmaster at New London historically copied information concerning train movements at that point.

The Organization relies primarily on its Scope Rule to sustain its claim. This Rule, in other cases before this Board, has been found to be general in nature and does not detail the work employees will perform. (See Award 16303, involving the same parties). Consequently it is the burden of the Petitioner to show that the work in dispute has been reserved exclusively to it. This Petitioner has failed to do.

As there is no showing that Operators (Telegraphers) were ever employed at New London headquarters to do the disputed work of copying train information and since the Organization did not prove its exclusive right to the work, the claim must be denied.

While the parties settled the underlying dispute on the property this Board pursuant to Transportation-Communication Employees' Union v. Union Pacific Railroad Company (385 U.S. 157, Dec. 5, 1966) notified the Railroad Yardmasters of America of the dispute, as a possible interested party, and invited it to submit its position and to be present or represented at the hearing held on December 17, 1971. That Organization chose not to participate in these proceedings and did not submit its position. Nevertheless, in fulfillment of its statutory obligation this Board resolves the dispute by finding that during the period in question in the copying of the information by the Stationmaster was not violative of Petitioner's agreement.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January 1972.