

Award No. 19027
Docket No. TE-19199

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
CHICAGO AND WESTERN INDIANA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Chicago & Western Indiana Railroad, T-C 5797, that:

Carrier violated the agreement, particularly Rule 7-M, when it failed and refused to the Interlocking Employee's, responsibility and service connected with the movement of trains through the interlocking limits of Oakdale Interlocking on the days and hours above mentioned.

Oakdale Interlocking is a remote controlled interlocking located one and one-tenth miles from and operated by the interlocking operator at 81st street tower. At or about 7:00 A.M. on the morning of July 20th the remote control apparatus at Oakdale failed to operate and was not again in service until about 8:00 P.M. on July 21st. There is located at Oakdale a manually operated switch machine for use during such failures, operation of this switch machine is properly the duty of Interlocking Operators.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute in this claim is predicated upon provisions of an Agreement between the Chicago and Western Indiana Railroad Company and the Transportation-Communication Division, BRAC dated December 1, 1969 as amended and supplemented and by this reference is made available to your Board.

The dispute arose because Carrier required or permitted employees not covered by the Agreement to perform work belonging to Towermen and covered under the Telegraphers Agreement.

Carrier contends the work performed at Oakdale by the signal forces was signal work performed under the direction of the Operator at 81st Street Tower.

Employees contend there was no construction, repair or maintenance work performed on the Manual Machine at Oakdale, therefore, the operation of this machine by the Signalman, was in violation of the Telegraphers' Agreement.

I must insist that this is properly the work of the Interlocking Department Employee's and that carrier did violate the Agreement.

You have suggested that I set a date in April for a conference, I suggest that we discuss both claims on April 1, 1970, at 10:00 A. M. in a place of your choice, will you please advise.

Sincerely,

/s/ Alvin C. Hale

(f) AUTHORITIES RELIED ON

Award No. 553 (Millard), Award No. 5694 (Smith), and 5407 (Donaldson).

CARRIER'S STATEMENT OF FACTS: On July 20, 1969 the interlocking machinery at Oakdale failed to operate and was not again in service until 8:00 P. M. on July 21, 1969.

The organization claims that during the time maintainers were working on this interlocker to restore service, "available extra, system relief, or regular employee" should have been used to operate the switch machine at Oakdale Interlocker. During the period from 7:00 A. M., July 20, 1969 to 8:00 P. M., July 21, 1969, Signal Department maintainers were working to restore service to the remote system at Oakdale Interlocker. Throughout this entire period, the operator at 81st Street Tower would phone the building containing the Oakdale switch machines and instruct the maintainer as to what manual switch should be thrown. At all times, prior to, during this period, and subsequent to the breakdown, the tower operator at 81st Street was in complete control of Oakdale Interlocker.

OPINION OF BOARD: This claim arises as a result of temporary failure to Carrier's remote control machinery at Oakdale on July 20 and 21, 1969. Signal maintainers were used by Carrier to restore the machinery to service and during the time of repairs, Carrier permitted signal employees to manually operate the interlocking machine. The Organization claims that Carrier violated Rule 7-M of the Agreement on account of said manual operation of said interlocking machinery is the duty of and belongs to claimants, Towermen.

The Organization's position is that a signalman does not take directions or orders from a Towerman unless he is performing Towerman's work; that the operation of interlocking mechanism manually by signalmen was a case of employees crossing craft lines and performing work under another agreement, the Telegraphers' Agreement; that the manual machine was not in need of repairs and maintenance and thus there was no need for signalmen to perform any work on it; that in the Scope Rule of the Agreement the title of Towerman is found and the description of Towerman found in the United States Railroad Labor Board's book is ample proof plus the language found in Rule 20 of the Schedule Agreement that the work in dispute belongs to the Telegraphers; that even if the Organization had permitted or overlooked a violation of its Agreement in the past, this in no way would entitle Carrier to violate the Agreement and then rely on past practice for support; that the operation of the manual switch machine by signalmen for approximately thirty-seven (37) hours was work covered under the Telegraphers' Agreement.

Carrier's Manager of Personnel, George Moriarty, by letter dated April 9, 1970 to General Chairman, Alvin C. Hale, advised Mr. Hale that: "You

were further advised that Board cases on alleged scope violations were denied in instances where the petitioners were unable to prove past practice over the entire system. Inasmuch as you have failed to prove past practice where members of your organization were assigned to remote control points during plant failures, you may treat this letter as a formal reaffirmation of my denial."

The Scope Rule facing this Board in this dispute is a general scope rule wherein the positions are listed but not the work. In a long line of awards, too numerous to mention, this Board has consistently adhered to the principle that in order to show a violation, the Organization must prove system-wide by history, custom and tradition that the work in dispute has been exclusively reserved to Telegraphers. We find that the Organization failed to meet said burden and thus we must 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 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 28th day of February 1972.