Award No. 19116

Docket No. TE-16127

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
(Formerly Transportation-Communication Employees Union)

HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Houston Belt and Terminal Railway, that:

1. Carrier violated the Telegraphers' Agreement when on December 10, 12, 15, 15, 17, 17, 25, 26, 1964, and on January 4, 5, 7, 8, 8, 9, 10, 11, 12, 23, 24, 25, 25, 28, 28, 29, 30, 1965, it required or permitted yardmasters at New South Yard to secure locations of and instruct Santa Fe trains of which track to enter upon arrival New South Yard, when these trains were outside of yard limits and outside of yardmasters jurisdiction by RADIO. In each and every instance the yardmaster opened up an office of communication within his office.

2. Carrier shall compensate senior idle telegrapher (extra in preference) eight hours pro rata rate applicable at New South Yard for each and every violation.

EMPLOLYES" STATEMENT OF FACTS: New South Yard is located 4.17 miles south of Houston, Texas and is under the operation of the Houston Belt and Terminal Railway. The communication office is located on the second floor of the yard office and the yardmasters are stationed on the first or main floor in the yard office at New South Yard. This yard is used for the purpose of making up and switching trains of the Forth Worth and Denver Railway, Chicago, Rock Island and Pacific Railway and the Gulf, Colorado and Santa Fe Railway.

The Santa Fe Railway installed radios in the yardmaster's office for the purpose of communicating with their trains within the yard limits of Houston, Texas. They also installed another radio in the telegraph office for the telegraphers' use in communicating with trains outside the yard limits of Houston, Texas. The yard limits extend one mile south of the yard office at South Yard. After leaving said yard limits the trains are on the Santa Fe Railway and under the railroad's jurisdiction. The violations here in question embrace misuse of the radio, that is, instead of permitting the telegraphers to trans-

mit and receive communications with the trains outside the yard limits, the yardmaster at New South Yard assumed these duties.

Claim was instituted on February 3, 1965 with innumerable violations cited. TCU Exhibit 1 lists the violations and the dates. As a typical example, we quote from the first violation cited:

> December 10, 1964, Train No. 138-39 located at Mykawa called Yardmaster Cox at New South Yard and asked him if he was holding them out. Mr. Cox replied no and told them to come to track 2 and double to track 3.

As shown in TCU Exhibit 1, page 4 of 5 pages, Mykawa is five miles from New South Yard and considerably outside the yard limits of New South Yard.

The claim was appealed to the highest officer designated to handle claims or grievances and declined by him.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The Santa Fe Railway Company, on November 21, 1964, installed a radio base station at New South Yard, Houston, Texas, placing a microphone and control button in tower on second floor of New South Yard office and also on the first floor in yardmaster's office. The purpose of the base station was to permit station to train contact for the purpose of exchange of information.

In the initial letter filing the claim (Carrier's Exhibit "A"), District Chairman Vezorak, in his statement of fact said New South Yard is located 4.17 miles South of Houston, Texas. This statement is in error. The entire facility at New South Yard is located within the city limits of Houston, Texas.

Starting with the yard limit, which is approximately one mile south of the yard office at New South Yard and the end of the HB&T Railway, the Santa Fe Railway operates TCS which is defined as Traffic Control System. Defined in their Code of Operating Rules as: "a block system under which movements are authorized by block signals whose indication supersedes the superiority of trains for both opposing and following movement on the same track." The operation of these block signals under TCS is accomplished by the Dispatcher at Temple, Texas giving instructions to the operator at control station at Alvin, Texas for the operation of the block signals. A Control Station as defined in the Code of Operating Rules reads: "The place where the control machine of a traffic control system or an interlocking is located".

The Organization has made claims for various dates in December, 1964 and January, 1965 (Carrier's Exhibits "B", "C", "D", "E", "F", and "G") based on their contention that the yardmaster violated the telegraphers agreement when instructions as to the yarding of the train was given to the train crew via radio while the train was outside the yard limit signs at Houston, Texas.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue herein is whether or not Carrier violated the Agreement, to perform by radio communications work on the dates in

question. The communications took place on the various dates in dispute by and between Yardmasters and engine and train crews.

The Organization contends that Carrier violated the Scope Rule of the Agreement, Rule (1) when said non-scope employes transmitted by radio the communications in dispute. The Organization's position is that said communications were messages of record and affected train movements and thus violated Rule 1(c) prohibiting non-scope employes from transmitting train orders.

Carrier's defenses to this claim are (a) the complained of action clearly does not fall within the criteria established by many Awards of this Board as a train order or communication of record; (b) the information, regardless of the position of the train at the time of communication, cannot be acted upon until the train is within the yard limits at New South Yard, Houston, Texas and (c) since the train is under Traffc Control System and is governed by block signal indication only, the complained of conversation could not in any manner involve the operation or safety of the train.

This Board was confronted with a somewhat similar issue in Award No. 13303, involving a radio-telephone communication between a Yardmaster at Way, Kansas and a train crew No. 72 at Nickerson, Kansas, whereby the train crew informed the Yardmaster that they were at Nickerson, Kansas and had 83 cars to be set out at Way, and the Yardmaster responded by informing the train crew to set out the cars in Long 6 at Way.

The Board in said Award No. 13303 determined that the communication in dispute was not a "train order", as conceded by the Organization, or a "line up" or other "message of record". Further, the Board in said Award No. 13303 found that the conversation taking place outside the yard rather than at the yard itself was of no force and effect.

The Board in said Award No. 13303 stated in part:

> "* * * * *. On the contrary, the character of the communication seemed to be a routine yarding dialogue, the only difference being that the exchange of conversation took place some distance from the yard rather than at the yard itself. (See Awards 12306, 11343, 10363, 9629, 1396)."

Thus we find that the communications transmitted on the dates in question were not "train orders" within the intent and meaning of Rule 1(c) of the Agreement and therefore 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 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of April 1972.

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