

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE BALTIMORE AND OHIO RAILROAD COMPANY**

DISPUTE.—

"Claim of General Committee of the Order of Railroad Telegraphers on B. & O. R. R. that the carrier is violating Article 21 of the Telegraphers' Schedule Agreement, in permitting and requiring train and engine crews to copy train orders at Cheat River as a result of the closing of the telegraph office at that point; and that telegraph positions shall be restored at Cheat River to perform this character of work covered by Article I of the Agreement, and as defined in Article 21 of same, and the further claim that pay be allowed extra telegraphers who were available to perform the work."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

There is in evidence an agreement between the parties, bearing effective date of May 16, 1928, as to rates of pay, and July 1, 1928, as to rules.

The parties jointly certified to the following statement of facts:

"Account of reduction in train operation, the following positions covered by the Telegraphers' Agreement were abolished on the FM&P Sub-division of the Pittsburgh Division on the dates indicated:

Location	Number of positions	Position	Rate	Date positions abolished
Cheat River.....	3	"B"	\$0.66	10-15-31 (office closed).
Lake Lynn.....	1	"A"	.615	1-24-31.
Point Marion.....	1	"BCT"	.665	9-15-30.

On July 14th, 1933—

Engr. Wood reported by phone, arrival Ex. 6026 at Cheat River at 4:05 A. M.

Engr. Jones reported by phone, arrival Ex. 6015 at Cheat River at 4:05 A. M.

Condr. Emerick reported by phone, arrival No. 75 at Cheat River at 4:50 A. M.

Condr. Coughenour reported by phone, arrival No. 66 at Pt. Marion at 12:24

P. M.

Engr. Ray reported by phone, arrival Ex. 6015 at Cheat River at 1:22 P. M.

Condr. Weimer reported by phone, arrival 1st 71 at Cheat River at 1:40 P. M.

Condr. McCrossin reported by phone, arrival 2nd 71 and copied train order No. 71 at Cheat River at 3:15 P. M.

Condr. Coughenour reported by phone, arrival No. 65 at Pt. Marion at 4:46 P. M.

Condr. McCrossin reported by phone, arrival No. 65 and copied train order No. 77 at Cheat River at 5:05 P. M.

Engr. Knepper reported by phone, arrival Ex. 6028 at Cheat River at 6:05 P. M.

Condr. Radcliffe reported by phone, arrival Ex. 2835 and copied train order No. 81 at Cheat River 6:10 P. M., also copied Train Order No. 79 at Cheat River 6:12 P. M. Condr. Radcliffe reported to Agent at Smithfield number of loads and empties at Lake Lynn and Point Marion.

Condr. McCrossin copied train order No. 84 at Cheat River at 6:33 P. M.

Engr. Wood reported by phone, arrival Ex. 6001 at Cheat River at 7:55 P. M.

Condr. Long reported by phone, arrival No. 73 at Cheat River at 8:00 P. M.

Engr. Younkin reported by phone, arrival Ex. 6015 at Cheat River at 10:20 P. M.

Engr. Jones reported by phone, arrival Ex. 6007 at Cheat River at 10:20 P. M.

Engr. Boseley reported by phone, arrival Ex. 6028 at Cheat River at 11:10 P. M.

Condr. Decker reported by phone arrival 1st 75 at Cheat River at 12:00 M. N.

Condr. Cross reported by phone, arrival 2nd 75 at Cheat River at 12:00 M. N."

The carrier reported that during the month of January 1935 a total of 27 train orders were copied in a 31-day period, an average of less than one per day, which the carrier asserts is a more accurate reflection of the copying being done by train crews than is shown in the detail for July 14, 1933, above quoted.

Article 21 of the Agreement between the parties reads:

ARTICLE 21

"Trainmen Using Telephone.—It is not the disposition of the Railroad to displace operators by having trainmen or other employees operate the telephone for the purpose of blocking trains, handling train orders or messages, except in bona fide cases of emergency. This does not apply to train crews using the telephone at the ends of passing sidings or spur tracks in communication with the operator."

This case is fully governed by the principles laid down by this Division in Docket No. TE-230, Award No. 244, as follows:

(1) Where the blocking of trains or handling of train orders or messages by trainmen is not a regularly established practice at a particular point, but is occasional, unexpected, and exceptional, Article 21 does not require the employment of a telegrapher. We think that this principle is fairly within the meaning of the emergency exception.

(2) Where, however, the blocking of trains or handling of train orders or messages is a regularly established practice, even though small in volume, Article 21 requires the employment of a telegrapher, subject to the exception relating to passing sidings or spur tracks.

(3) Where, during a portion of the 24 hour period, work of the category described in paragraph (2) above has to be performed, a telegrapher should be employed for the particular trick in which the work falls, but if during some other portion of the period not comprised within such trick, work of the exceptional character described in paragraph (1) above has occasionally to be done, it is not necessary to keep a telegrapher employed for the extra trick or tricks in question, but the telegrapher employed on the trick in which the established work falls should be called if available. This principle is within the meaning of the week days release rule.

Not wishing to pass upon more than is before us, we confine these principles to cases like the one before us, involving the displacement of jobs by the closing of a telegraph office at an important point on a main line, and the blocking of trains or the handling of train orders or messages by train crews over the telephone as an established regular policy.

As in Docket TE-230, we have insufficient facts upon which to base an exact award. We do not know whether or not the work which properly belongs to the telegraphers is comprised within a one-trick period or whether it stretches beyond that, nor do we know to what extent work of the character described

in paragraph (1) above is occasionally being performed, nor what changes in the handling of traffic may have occurred since the positions were abolished. The matter, therefore, must be left for adjustment by the parties on the basis of the foregoing principles without prejudice to either party to submit the case to this Board, if either the facts or the application of the principles to the facts cannot be agreed upon.

AWARD

Claim sustained, subject, however, to adjustment by the parties in accordance with the principles outlined above.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 16th day of April 1936.

DISSENT

The award in this case is based upon findings including principles laid down in Award No. 244, Docket TE-230.

In that case the members of this Third Division signatory hereto registered in a dissent their objections to the analysis made by the Referee leading to the conclusion that the restrictive but not absolutely prohibitive words of Article 21, were words of mandatory prohibition. We are of the opinion that dissent gave correct interpretation of Article 21 and that the indicated experiences on the line of the carrier evident in the record, clearly supported the objection. As the award in the instant case again relates to Article 21, the only term of the agreement recognized by the disputants to be involved, and is based on the analysis made in Docket TE-230, similar dissent is herewith recorded to the award in the instant case, TE-232, and reference is made to the dissent in Award No. 244, Docket TE-230, q. v., which is to be considered in full effect and application as a dissent to the instant award in Docket TE-232.

R. H. ALLISON.
C. C. COOK.
GEO. H. DUGAN.
A. H. JONES.
L. O. MURDOCK.