Award No. 1024
Docket No. TE-992

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers on the Baltimore and Ohio Railroad that the assigning of employes not under the Telegraphers' Agreement to operate regularly the telephone at Bridge No. 1386 near Ripley Landing, W. Va., for the purpose of protecting train movements, also handle messages, while the bridge was being extensively repaired, was a violation of the Telegraphers' Agreement as such work is covered by said agreement and should have been performed by employes coming within the scope of said agreement in accordance with Articles 1, 19 and 21 of said agreement and that the available extra operators be paid for the time lost by them by reason of employes not under the agreement being assigned."

JOINT STATEMENT OF FACTS: "Bridge 1386 located near Ripley Landing, W. Va., was badly damaged by flood in the early part of 1937. Temporary repairs were made after the waters receded and on March 2, 1937, a conductor and two flagmen were assigned to protect movement of locomotive crane car used by contractor engaged in making permanent repairs to the bridge. A temporary telephone was installed which was used by the conductor to obtain from operators located at Millwood and Ravenswood information on movement of trains, as well as the handling of some messages. This arrangement continued in effect from March 2, 1937, to some time in July, 1937."

POSITION OF EMPLOYES: "Articles 1, 19, and 21 of the Telegraphers' Agreement are invoked in this dispute. The Agreement bearing effective date of July 1, 1928, as to rules and effective date of May 16, 1928, as to wages governs.

"Article 1, Paragraph A, provides that:

'The following rules and rates of pay shall apply to all positions held by telegraphers, telephone operators (except switchboard operators), agents, agent telegraphers, agent telephoners, towermen, levermen, tower and train directors, block operators and staff men specified in the subjoined wage scale, hereinafter referred to as "Employes."'

"Article 1, Paragraph F, provides that:

'When existing pay roll classification does not conform to paragraph (a), employes performing service in the classes specified therein shall be classified in accordance therewith.'

"A sketch is attached, marked Carrier's Exhibit No. 1, showing the track layout and the telephone facilities that were provided at Ripley Landing for use in handling the work of rebuilding bridge 1386."

OPINION OF BOARD: The claim, the facts and the contentions of the parties are hereinabove set forth.

On the second day of March, 1937, the carrier undertook to make extensive repairs to bridge number 1386 near Ripley Landing, West Virginia. These repairs required the use of a locomotive crane car. There had never before been an operator at Ripley Landing. A temporary telephone was installed by means of which the conductor obtained information from operators at Millwood and Ravenswood regarding the movement of trains for the purpose of getting the crane car off the track so as not to impede or endanger traffic.

From the whole record the Board finds that there was a violation of Articles 1, 19 and 21 of the agreement, the latter two of which read:

"ARTICLE 19

"Telegraphers or telephoners at temporary ends of single track during periods of construction, at wrecks, washouts and similar places, will receive sixty-eight (68) cents per hour, except that they will be paid at overtime rate when required to work in the open, and exposed to the weather. When regularly assigned men are used for this service and their hourly rate is greater, the higher hourly rate will apply. Time worked on regular assignment will be paid for at regular rate."

"ARTICLE 21

"It is not the disposition of the Railroad to displace operators by having trainmen or other employes 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 communicating with the operator."

Article 6-(d) should also be considered. It reads:

"ARTICLE 6

(d) When conditions indicate the necessity for temporary work of thirty days or more for Copy or Side Wire Operators, such positions shall be bulletined and answered by wire within five days and successful applicants may return to their immediately preceding positions within six months; Article 4, paragraphs (b) and (c) not to apply. After six months, their immediately preceding positions will be advertised, and they may assert their seniority only by bidding in vacancies, including their immediately preceding positions.

"Note—This paragraph shall also apply to temporary offices as result of construction, such as rebuilding bridges, change in line, etc."

We believe the language above quoted is applicable to this case and is controlling and that the repair work at bridge number 1386 came within the provisions. These provisions of the agreement required the carrier to employ temporarily someone coming within the agreement to procure information concerning the movement of trains at that point. As these rules were violated, the claim must be sustained and the extra operator, available but not employed, should be compensated for the lost pay sustained by reason of the violation of the agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 carrier violated the provisions of the agreement as hereinabove shown.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1940.

DISSENT TO AWARD NO. 1024, DOCKET TE-992

This award has its source in a false conception of the intent of terms of a contract in respect to establishment of possessive rights, in a lack of knowledge of the practical phases of the subject of the dispute, and in incomprehension of the normal activities of railroad employes of various crafts who regularly perform the character of services here in dispute in full compliance with the various contracts held by their respective crafts with the carrier.

This is illustrated clearly by the Opinion which declares that each and all of three named articles of the agreement had been violated because as stated in the Opinion, "These provisions of the agreement required the carrier to employ temporarily someone coming within the agreement to procure information concerning the movement of trains at that point."

Let us take the Articles in order as the Opinion quotes them. First, Article 19: there is not a single word, phrase, or suggestion of mandatory requirement that telegraphers be employed at any location such as this (conceding it to be a "washout"—one situation mentioned in Article 19). The article simply, directly and unambiguously specifies only that telegraphers at such locations will be paid certain rates for certain conditions of employment. To give to such a provision of a contract the meaning that under the temporary situations at such locations, the telegraphers have the right to demand and the carrier has the burden of employment of a telegrapher whether there is need for such service or not is to give unintended, and violently distorted meaning to a contract provision.

Article 21: Here is an article that properly might be brought into question by the claim, and indeed is the only article of the three relied upon in the Opinion that with reason could be so considered. The article in particular specifies under what circumstances trainmen shall not displace operators. But what do we find in the Opinion? It says that this article too required the Carrier to employ temporarily someone coming within the agreement **"to procure information concerning the movement of trains at that point."** That purpose is not one mentioned in nor covered by Article 21; the Opinion thus not only declares an unintended and unstated meaning, but it ignores the last sentence of Article 21, reading, "This does not apply to train crews using the telephone at the ends of passing sidings or spur tracks in communicating with the operator." What then could possibly inspire the statement that Article 21 imposed such a requirement? None other than

lack of knowledge, incomprehension, or non-acceptance of the practical fact that maintenance of way men, trainmen and others not coming under the Telegraphers' agreement in the usual performance of their duties constantly procure information concerning the movement of trains, and that there would never arise in the thought of any man with even limited knowledge of practical railroad operations that the procuring of such information in any way infringed upon the rights of other crafts of employes or in any manner violated any existing labor agreement. In fact, practical operation of the railroad would be impossible of continuation if the dictum of that opinion was accredited. It in fact could only be voiced because realization of the background of normal railroad operations was lacking.

And, Article 6 (d): The preceding comments relating to Article 19 are equally applicable to the "dragging-in" of this un-related provision of the agreement to the claim here presented. There is no mandatory requirement of employment of operators where the volume or the character of the work does not require them. Neither this article nor any other article of the agreement was intended to require the employment of operators unless there is work for them to do and that work is of the class to which they have exclusive right. As previously shown, common knowledge of railroad matters would not permit the statement that "to procure information concerning the movement of trains" was an exclusive right of telegraphers and that its procural by any other employes constituted a violation of the Telegraphers' agreement. The very introductory wording of Article 6 (d) shows that its intention was based on a presumption of the necessity of the work at all, and specifically required that which should be done in the event that the necessity for the work continued for thirty days or more. It is a palpable error of contract construction to read into a provision such as this article 6 (d), as well as articles 19 and 21, the derivation of the fundamental right of a particular class of employes to exclusive performance of the work covered by their agreement and an inexcusable error to give particular designation of the work as in this case to be such as to "procure information concerning the movement of trains" when such work never has been, is not now, and in practical continuance of railroad operations never can be restricted as an exclusive right of the Telegraphers under their agreement.

That such opinion has here been expressed leaves no alternative than to show its ineptitude arising from gross incomprehension of the practical subject with which it deals. This dissent is the last of the dissents upon a recent group of awards rendered by the Referee appointed to sit with the Division and authorized to render the awards in that group. The evident misconceptions of the records, the all too-apparent lack of knowledge of the practical railroad operations involved, and the apparent incomprehension of those operations and the normal relations of the various crafts of employes and their work to those operations leaves only the charitable but uncompromising hope that never again shall disputes, whose wise and just disposition are so essential to the establishment of peaceful relations between the employes and the carriers,— the purpose of the legislation which created this tribunal,—be subjected to unreal and perverted decisions such as here have been rendered, which by reason of their impracticability and error leading to their discredit by all reasoning men can but increase rather than allay the difficulties in the endeavors to reach common understanding of true intended meanings of existing contracts and mutually agreeable relations between the parties thereto.

/s/ R. F. Ray
/s/ C. P. Dugan
/s/ A. H. Jones
/s/ R. H. Allison
/s/ C. C. Cook