

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Royal A. Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers on Louisville & Nashville Railroad, that the Carrier is violating the terms of the telegraphers' agreement by permitting and/or requiring train and engine service employes to handle orders pertaining to and affecting train movements and to block trains at North Block, Ky., by the use of the telephone, and that so long as the Carrier elects to have work of this character performed at this point it shall be performed by employes under the telegraphers' agreement."

EMPLOYES' STATEMENT OF FACTS: "An agreement bearing date October 1, 1927 as to rules and working conditions, and August 1, 1937 as to rates of pay, is in effect between the parties to this dispute.

"Prior to July 11, 1932 the Carrier maintained a continuously operated telephone office at North Block, Ky., in the Cincinnati Terminals by means of a 1st trick, 2nd trick and 3rd trick operator-leverman positions. These positions were covered by the telegraphers' agreement.

"On July 11, 1932 the Carrier discontinued these three (3) positions, dismantled the office and installed in lieu thereof a telephone in a booth for use by train and engine service employes to secure authority for their trains, cuts or engines to enter the southward main track and proceed on the southward main track from Covington yard to 30th Street telephone office, and for similar northward movements to cross the southward main track from the northward main track at North Block to enter the Covington Yard or to cross the southward main track to the northward main track and proceed thereon to K. C. Junction, all of which work was formerly performed by the telephone operators in the former North Block telephone office."

POSITION OF EMPLOYES: "The scope Rule 1 of the prevailing telegraphers' agreement provides:

"The following rules and rates of pay shall apply to all wire chiefs, telegraphers, telephoners (except switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators, operators of mechanical telegraph machines, staffmen, and such freight and ticket agents as are listed herein."

"Rule 16 of said agreement provides:

"No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available, or ,

Carrier's Transportation Rules (Standard on American Railroads) and their detailed movements directed by yardmasters through the medium of telephones or given verbally when practicable. Road trains are likewise governed in their movements by yardmasters while in yards under the jurisdiction of yardmaster, the only difference being that yard engine rights are created by Rule 93 while a road train is created by timetable or train orders.

"The Carrier wishes to point out to the Board that in their Statement of Claim the employees mention 'North Block, Ky.' The natural inference to be gained from such a designation is that this was a railroad station in the common meaning of the term. There was never any such station. It was merely a point in the large Cincinnati Terminals, so designated to identify it and was established for blocking trains and for the purpose of expediting and facilitating movements to and from the two main lines in a heavily congested territory within the yard, thereby relieving the yardmaster of looking after this feature of his work. And thus it was, when conditions changed and the blockmen were no longer needed the jobs were discontinued.

"The Carrier wishes to further point to the language used by the employees in their Statement of Claim that:

"the Carrier is violating the terms of the telegraphers agreement by permitting and/or requiring train and engine service employees to handle **orders** pertaining to and affecting train movements and to block trains at North Block, Ky., by the use of the telephone, etc. . . ." (Emphasis added.)

"It will be noted that no claim is made that **train** orders are used. The North Block block operators were never used as train order operators, as train orders were not necessary within the yard, all train orders for road movements at the time in question being issued at the south entrance to the yard, designated as Latonia about two miles to the southwest. Since December, 1936, train orders have been issued at 30th Street (Old South Block).

"Crews communicating with the operators at 30th Street or the yardmaster at Central Covington yard by the use of the intra-terminal telephone in no manner violate the agreement as the innumerable movements of trains and switching movements in this large terminal are all directed by many yardmasters, either orally or through the use of 103 telephones established for this purpose.

"No provision of any agreement has been violated in this dispute. No grievance calling for the exercise of jurisdiction by any tribunal can arise as result of a job being abolished when there is no work to be done, or the little work of telephoning that is left has been transferred to employees of the same craft only few hundred yards distant."

OPINION OF BOARD: The claim as stated by the employees is this:

"Claim of the General Committee of the Order of Railroad Telegraphers on Louisville & Nashville Railroad, that the Carrier is violating the terms of the telegraphers' agreement by permitting and/or requiring train and engine service employees to handle orders pertaining to and affecting train movements and to block trains at North Block, Ky., by the use of the telephone, and that so long as the Carrier elects to have work of this character performed at this point it shall be performed by employees under the telegraphers' agreement."

The claim in substance is that the work formerly done by the three operator-levermen at North Block has been wrongfully transferred to, and is now being done by, trainmen in violation of contract and to the prejudice of the employees covered by the Agreement of October 1, 1927.

At the outset, the carrier raises the question of jurisdiction, which is considered without merit. On that issue, it is immaterial that the North Block tower operator-levermen jobs had been abolished, and so were not in existence, at the taking effect of the Railway Labor Act. That law in its **prospective** operation includes all such disputes as this. In consequence, the jurisdiction of the Adjustment Board to decide them is plain.

We are dealing here with the operation of a terminal yard. We are concerned exclusively with yard movements and not at all with line of road movements, except as through trains pass through the yard.

The communication of the yardmasters' directions to trainmen is to a large extent over the yard telephone system. Some of it is by signal or word of mouth. No intermediary between yardmaster and trainmen is necessary except as distance separates them. If within hearing of each other, no one would suggest the need of a third person as a go-between. No more is such go-between necessary when the telephone is used, if the receiving end is not a telephone office but rather and only a mere instrument in the yard which does not require the attendance of an operator. Normally, directions for yard movements are not in writing and are not made a matter of record.

The theory of the claim is that, although the three operator-levermen positions were properly abolished, the work is now being done improperly and in violation of the Agreement by trainmen who use the telephone in procuring directions from the yard office.

The trainmen are not doing the work of the operator-levermen. What is happening is that, for yard movements, trainmen are getting their instructions directly by telephone instead of having their action controlled by operator-levermen. It is impossible to see, in the terms of the rules, any ground for insisting, as the employees do with commendable candor, that telephone operators should be stationed at the telephone instrument which is now placed approximately where North Block used to be.

If they were there, what would they do? Instead of the trainmen talking directly to the yardmaster, he would give his message to a telephone operator, who would repeat it into the 'phone, get the reply and repeat that to the waiting trainman. Under the facts of this case, such an unneeded and unnecessary operation is certainly not contemplated by anything in the rules. That aside, the process (as distinguished from the result) is essentially different from the work formerly done by the three operator-levermen in North Block tower.

The employees stress Rule 16, which does give telegraphers the exclusive right, except for train dispatchers, "to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency."

That rule has no application for two reasons: (1) While it is true that instructions for movements in a yard are in a very real sense orders, they are not "train orders" within the meaning of Rule 16. That rule, the referee is convinced, applies only to the more or less formal, standardized written train orders which govern line of road movements. (2) In any event, this case involves no telegraph or telephone office "where an operator is employed." In short, the coverage of Rule 16 simply does not reach this case. And it is not a case of "evasion" of a rule as in Award 604, Third Division.

Proper response to the careful and exhaustive manner in which this case was argued to the Referee makes it appropriate to add the following in support of the interpretation here made of the phrase "train orders" as used in Rule 16: The unreported decision by District Judge Hollister in *U. S. v. Cleveland, Cincinnati, Chicago and St. Louis Railway Co.* has been considered, as has also that of Supreme Court in *A. T. & S. F. Railway Co. v. U. S.*, 269 U. S. 266. Neither are in point. In both the Hours of Service Act was con-

strued. The determinative language of that statute, so far as we are now concerned with it, consisted of these words: "Orders pertaining to or affecting train movements." The Supreme Court of United States, speaking through Mr. Justice Holmes, was of the opinion that a yardmaster was not handling "orders" within the meaning of the statute. The point is that anything like a statute or a railroad rule must be construed in the light of and so as to accomplish its purpose.

It is perfectly plain that the phrase "train orders," as used in Rule 16, was not intended to include the oral and signal direction of yard movements in which written orders are seldom used. It is enough to demonstrate the correctness of that view to refer to the definition of yard by the "Standard Code of the American Railway Association," page 15. It reads thus: "YARD—A system of tracks within defined limits provided for the making up of trains, storing of cars and other purposes, over which movements not authorized by time table, or by train order, may be made, subject to prescribed signals and rules, or special instructions." (Emphasis supplied.)

That demonstrates that the "train orders" referred to by Rule 16 are the more or less standardized orders used for line of road train movements. See Standard Code, pages 75-88, inclusive.

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 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 for the reasons stated, no violation of the Agreement has been found.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of April, 1941.