

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY LINES

(Berryman Henwood, Trustee)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on St. Louis Southwestern Railway Lines.

(1) That the Carrier violated the scope rule of the telegraphers' agreement when, on twenty-eight days between February 19, 1946, and March 22, 1946 (February 19, 20, 21, 22, 23, 25, 26, 27, 28, March 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 1946), it required and/or permitted the conductor an employe not under the telegraphers' agreement in charge of Pole Driving Machines, between Mile Posts 272.23 and 378.13 to perform all of the communications service by means of the telephone, such as receiving track and time limit orders, line-ups, and other instructions and advice pertaining to the operation and movement of said machines, direct from and to the train dispatcher, and that such communications service is work covered by the scope rule of the telegraphers' agreement and shall be performed by employes under and subject to the rules of said agreement; and

(2) That the senior extra telegrapher idle on each day the arrangement was in effect shall be compensated in accordance with Article 2, Article 6-1, and/or Article 6-3, of the telegraphers' agreement, for each date the conductor, an employe not under the agreement, was required and/or permitted to perform the communications service in this case.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of December 1, 1934, as to rates of pay and rules of working conditions is in effect between the parties to this dispute. On February 19, 20, 21, 22, 23, 25, 26, 27, 28, March 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 1946, (28 days) (see joint check) the carrier had in operation one or more Pole Driving Machines between Mile Posts 272.23 and 378.13 (Centralized Traffic Controlled Territory), in charge of a Conductor and two Brakemen, in addition to the foreman and crew in charge of driving poles at the base of ties along the main track for roadbed maintenance purposes. These pole driving machines are of the self propelled type, powered by gasoline motor, for movement along the track. A conductor and two brakemen were assigned to work with these pole drivers for the purpose of affording protection against train movements. The Conductor, an employe not under the Telegraphers' Agreement, was required to perform all of the communications service, incident to the movement and operation of the aforementioned machines, such as receiving track and time limit orders, (see joint check), line-up of trains and other instructions and advice, direct from and to the train dispatcher by means of telephones located at switches, sidings, stations, and a portable telephone, all connected with and made a part of the dispatching circuit.

Claim was made for pay for the senior idle extra employe, under the rules of the telegraphers' agreement, for each day on which such extra employe was thus deprived of this work. The Carrier declined the claim.

Thus it included the use of telephones in connection with roadway machines. The award in that case was as follows:

"Claim remanded to the parties to adjust the dispute and proceed in conformity with the opinion."

Satisfactory settlement has not yet been reached and negotiations are still in progress. In the meantime the additional CTC system has been placed in service south of Pine Bluff, Arkansas, and similar dispute has arisen in that territory.

It is the Carrier's position that negotiations should cover all disputed uses of the CTC telephones on both the Illmo and Pine Bluff districts, but in the event satisfactory settlement cannot be reached, then the remanded case covered by Award 2972 should be resubmitted to the Board, and any further award in that case be used as a basis of disposing of the dispute on the Pine Bluff district. Carrier has been making every possible effort to arrange a joint check, with view of disposing of the matter on the above stated basis. The Organization has not accepted this basis and has repeatedly delayed making the check after dates have been arranged.

However, regardless of what basis upon which the dispute may be finally submitted to the Board if satisfactory settlement cannot be reached on the property, the Carrier respectfully submits that it is improper and not conducive to successful settlement on the property for one party to separate one particular use of the CTC telephones from the uses in dispute and appeal that one to the Board for decision while negotiations are in progress.

Such action is not equivalent to limiting the submission to certain territory for the purpose of simplification. In that event all functions of the CTC telephones are under consideration and one use is not passed upon without regard for the whole matter. Consequently, the resulting award may furnish a substantial basis for disposing of the dispute on other territory.

In the present case an award will not aid in settling the remainder of the dispute regarding CTC telephones, since it is not entirely representative of the conditions under which the telephones are used under ordinary operation. The case covers a specialized machine that may be used for a few days in a period of several years, and a decision upon such limited facts and narrow field could not be expected to furnish an equitable basis for the settlement of dispute regarding the occasional use of the CTC system telephones in the ordinary, everyday train operations under the CTC system.

When the original claim was filed (Exhibit 2) the Employees cited a number of awards of this Board in support of their position. However, the claim was made on basis that a portable telephone was being used, and none of the awards cited involved the use of CTC system telephones. Award 2972 is the only award in which the Carrier finds record of CTC operations.

As pointed out above, the scope rule of the present agreement does not cover the telephoning claimed. The offer to pay a telegrapher on dates a portable telephone was installed for and used by the conductor is a fair offer of settlement under the conditions in this case. Therefore, the Carrier respectfully requests that the claim be denied or remanded for handling with other phases of dispute regarding CTC telephones.

Exhibits not reproduced.

OPINION OF BOARD: The General Committee of The Order of Railroad Telegraphers claims that telegraphers should have been assigned to the Pole Driver Train used by the Carrier during the period from February 19 to March 22, 1946, inclusive, to perform all of the communication service necessary and that the Carrier violated the scope rule of their agreement by permitting the conductor in charge thereof, an employee not under their agreement, to perform this work. Because thereof, it asks compensation for those entitled thereto under the rules of their agreement.

These communications are set out in the claim to be: receiving, direct from the train dispatcher, track and time limit orders, line-ups, and other instructions and advice pertaining to the operation and movement of said machines.

The facts are that the Carrier had either two or three pole driving machines in operation between Pine Bluff and Louisville, Arkansas, during the period from February 19 to March 22, 1946, which is all in Centralized Traffic Control territory. In this territory telephones are located on the main line at various signals and switches so that trainmen, or others, can communicate direct with the train dispatcher. The pole driving machines were, at various times during this period, operated on the main tracks. They did so pursuant to track and time limits sought and received by the conductor in charge thereof from the train dispatcher. This was done by means of a telephone. During the period from March 4 to 8, 1946, inclusive, the conductor used a portable phone. On other dates such track and time limits were obtained by means of the telephones located at main-line switches or signals.

The question here involved is the same as presented in Docket No. TE-2993. It is between the same parties and involves the same agreement. It arises out of the manner in which the Centralized Traffic Control system installed by the Carrier is operated and relates to the scope of the parties' effective agreement. Docket No. TE-2993 presents the whole question while here the subject matter of the dispute is very limited.

By Award 2972, based on Docket No. TE-2993, we remanded the proceedings to the parties to adjust the dispute through negotiations without prejudice to its resubmission, in the event of failure to reach an agreement, on a record adequate for determination by this Board as to whether, in what manner, and to what extent the agreement has been violated.

To now determine in part what by Award 2972 we remanded to the parties to either negotiate or resubmit, with a record whereby the entire question can be determined, would be contrary to the purpose of that award and prejudicial to any negotiations that may be had pursuant thereto.

We think this dispute should be remanded until such time as the dispute in Docket TE-2993 has been finally disposed of pursuant to Award 2972.

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 employee 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 question of whether or not there has been a violation of the agreement is not determined.

AWARD

Claim is remanded until the dispute involved in Docket TE-2993 is finally disposed of pursuant to Award 2972.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 17th day of November, 1947.