Award No. 4009
Docket No. TE-4014

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Nashville, Chattanooga & St. Louis Railways,

(1) That W. G. Jones, regularly assigned Operator-Clerk at Dickson, Tenn., hours 8:00 a.m. to 5:00 p.m., with one hour for meals, shall be paid for a call on August 3, 1946, under Article V-(b) of the telegraphers' agreement account a section foreman, an employe not under the telegraphers' agreement, copying a line-up of trains at Dickson direct from the train dispatcher by telephone at 6:39 a.m. on August 3, 1946, when operator-clerk Jones was not on duty; and

(2) That E. H. Meek, regular assigned agent-operator at Burns, Tenn., hours 7:00 a.m. to 4:00 p.m., with one hour for meals, shall be paid for a call on August 3, 1946, under Article V-(b) of the telegraphers' agreement account a section foreman, an employe not under the telegraphers' agreement, copying a line-up of trains at Burns direct from the train dispatcher by telephone at 6:46 a.m. on August 3, 1946, when agent-operator Meek was not on duty.

JOINT STATEMENT OF FACTS: An agreement bearing date February 1, 1926, as to rates of pay and working conditions is in effect between the parties to this dispute.

W. G. Jones, claimant (1), was the regularly assigned operator-clerk at Dickson, Tenn., on August 3, 1946, with assigned hours 8:00 a.m. to 5:00 p.m. with one hour for meals. At about 6:39 a.m., August 3, 1946, Carrier's train dispatcher at Bruceton, Tennessee gave the section foreman at Dickson, by telephone at this station, a line-up of trains, which was prior to time Operator-Clerk Jones came on duty.

E. H. Meek, claimant (2), was the regularly assigned agent operator at Burns, Tenn., on August 3, 1946, with assigned hours 7:00 a.m. to 4:00 p.m., and one hour allowed for meals. At about 6:46 a.m., August 3, 1946, Carrier's train dispatcher at Bruceton, Tennessee, gave the section foreman at Burns, by telephone at this station, a line-up of trains, which was prior to time Agent-Operator Meek came on duty.

Claim for pay for a call under Article V-(b) of the telegraphers' agreement was made in behalf of each of the claimants on the ground they were

telephone prior to the time the telegraphers went on duty on the morning of August 3, at these two stations.

I have in my communication of October 15, 1946, called your attention to several decisions of the National Railroad Adjustment Board, Third Division, sustaining our position on these two claims.

I now supplant my statement noted next above by citing to you certain specific awards of the National Railroad Adjustment Board, Third Division, which definitely support the position of the Committee. And, in addition to those cited, there are other awards that do in part support the position of the Committee. I now cite Awards 604, 919, 941, 1024, 1261, 1268, 1281, 1283, 1284, 1535, 1552, 1553, 1671, 1720 and 1752. Such portions of these awards that support the position of the Committee in the dispute covering these two claims are now made a part of this record.

Yours truly,

(s) J. T. Burch
General Chairman,
The Order of Railroad Telegraphers."

A careful examination of the several awards referred to in General Chairman Burch's letter of November 25, 1946 fails to reveal that in any one of them had the Telegraphers Committee agreed, as had been done on The Nashville,Chattanooga & St. Louis Railway, that in Centralized Traffic Control territory Train Controllers could "Verbally or otherwise obtain information from and instruct employes in connection with the movement of trains, engines, hand cars (any car that is put on or taken off the track by hand), roadway machines, and the operation and maintenance of the Centralized Traffic Control System". It is therefore obvious that none of said awards can have any possible application in the instant case.

(Exhibits not Reproduced).

OPINION OF BOARD: This being a joint submission the facts are not in dispute. If necessary for complete understanding of questions discussed and determined they can be found by reference to the joint statement of facts appearing in the record.

The only factual question is raised by claimant's suggestion to the effect a rule or Memorandum of Agreement to be presently mentioned has no application to the issues involved for the reason the claim shows on its face the line-ups in question were given to section foremen by a train dispatcher and not by a train controller. Conceding the claimant is technically correct, the suggestion has little, if any, merit, and will be given no weight. It will be noted it is agreed in the joint statement of facts the information was furnished by the train dispatcher at Bruceton Tenn., a point on Carrier's railroad where trains are operated by a Centralized Traffic Control System, the machine of which is located at that point and operated by train dispatchers. As we understand the situation, before operators of such system were accorded representation as train dispatchers they were known as Train Controllers. Hence, the two positions are identical and the two titles, for purposes of this case, should be regarded as synonymous.

The primary issue here involved can be briefly stated. When section foreman by the use of the telephone directly contact train dispatchers and secure train line-ups under the conditions and circumstances set forth in the instant claims and in the joint statement of facts, does that action result in a violation of the scope rule of the current agreement between the Carrier and the Organization?

That, as a general proposition, the scope rule of any agreement preserves to employes covered by its terms such work as they were customarily engaged in at the time of its negotiation and execution is now too well established

by Awards of this Division to admit of any dispute. The natural result has been, unless it clearly appears it does not belong there, that to hold work is out from under the scope of an agreement is the exception and not the rule. This Division has repeatedly held that work of a class covered by the scope rule of a contract which is not within any exception to be found therein or any exception recognized by the Division as having the effect of taking it out from under its terms belongs to the employe in whose behalf the contract was made and cannot be taken away from them or delegated to others without violating such rule.

The writer of this Opinion has been cited to many Awards of this Division dealing with the question when, and the conditions and circumstances under which, a section foreman may or may not take line-up messages from other Carrier employes without violating the scope rule of the Telegraphers' Agreement. Since but one situation is here involved, namely, direct communications between a dispatcher and a foreman, he is not obliged to decide the others and is not disposed to attempt to do so. Neither is he inclined to rehash the reasons given in support of what he considers numerous irreconcilable decisions on the identical subject and others closely akin thereto. All that is required is to say that after a careful examination and analysis of such Awards he has determined that the great majority of them and those fortified by better reasoning hold that cummunications respecting train line-ups received by a section foreman over the telephone direct from a dispatcher violate the scope rule of the Telegraphers' Agreement. Therefore, restricting his decision to that question and that question only, based upon sound precedents where the effect on the rule of such communications was the sole question involved (See Awards of this Division 604, 919, 941, 1261, 1268, 1281, 1282, 1283, 1552, 2934, 3116) and because he is convinced the cited Awards are sound in principle this Referee has decided that under the conditions and circumstances disclosed by the record the scope rule of the current Agreement was violated. Therefore, this Division so holds.

The conclusion just announced has not been reached without giving careful consideration to a novel and interesting contention advanced by the Carrier which, although it is not sustained, is worthy of notice and treatment in this Opinion. To understand Carrier's position it will be necessary to briefly review the facts on which it is based.

On June 1, 1943, the respondent and the petitioner Organization entered into a Memorandum Agreement which reads in part as follows:

> "In order to provide Centralized Traffic Train Controllers (hereinafter called Train Controllers), when needed, for service in connection with the use of Centralized Traffic Control System, it is hereby agreed between The Nashville, Chattanooga & St. Louis Railway and its employes covered by the Telegraphers' Agreement of January 1, 1926, that positions of such Train Controllers shall be included in the scope of said Telegraphers' Agreement and will be governed by the rules and working conditions of such agreement except as otherwise herein provided.
>
> (1) The duties of Train Controllers shall consist of the dispatching of trains and/or engines and, when necessary, they will also verbally or otherwise obtain information from and instruct employes in connection with the movement of trains, engines, hand cars (any car that is put on or taken off the track by hand), roadway machines, and the operation and mmaintenance of the Centralized Traffic Control System."

Representation of the position of train controllers was transferred to the American Train Dispatchers Association by the National Mediation Board on April 13, 1944, and since that time train controllers have been train dispatchers and represented by the Dispatchers' Organization. In fact on April 1, 1945, the Carrier and the American Train Dispatchers' Association

entered into an entirely new contract covering the position of train controllers and doing away with the original Memorandum.

Since such date, at least, although it is conceded the terms of the new Agreement are somewhat similar if not the same as those of the old, there has been no contract in force and effect between the Carrier and the Telegraphers' Organization with respect to train controllers or dispatchers operating the Carrier's Centralized Traffice Control System.

Boiled down, the Carrier's position on this point is that the terms of the orginal Memorandum Agreement gave telegraphers' work to the train controllers and that such work as is described in Article 1 thereof, heretofore quoted, is no longer within the scope rule of the Telegraphers' Agreement notwithstanding such Memorandum is no longer in existence, even though the train controllers are now represented by another organization, and irrespective of the fact they are now covered by an Agreement over which the Telegraphers' have no control. In our opinion the Carrier's position is not tenable under the facts. The calls here involved were made after the Carrier had executed, as it had a right to do, an entirely new and independent contract with the American Train Dispatcher's Association. The effect of that action was to cancel and do away with the original Memorandum contract. The result was the only contract in existence between the Carrier and the Telegraphers was one containing the scope rule to which there were no exceptions material to this dispute. That left the Carrier with two alternatives. It could stand on the Agreement as executed or, if dissatisfied with its terms, it could negotiate for a new one. In any event, having failed to take affirmative action, it cannot now sucessfully contend that such Memorandum, long since extinct, limits the force and effect to be given the scope rule of the contract under which the parties have elected to continue their operations.

So far as the facts disclosed by the instant case are concerned we do not believe the showing made by the Carrier justifies the withholding of reparation on the two claims involved.

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 Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 1, 1934:

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the record shows a violation of the scope rule of the current Agreement.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1948.