Award No. 4050
Docket No. TE-3984

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Buffalo and East)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Lines, Buffalo and East, that,

(a) The Carrier is violating the Scope Rule of the Telegraphers' Agreement daily by permitting or requiring employes not coming thereunder, at the Wayneport Coaling Plant, on the Syracuse Division, to perform telephone operator service of record which is covered by said Telegraphers' Agreement.

(b) The senior extra employe under the Telegraphers' Agreement who has been or may be idle and available to have performed or to perform service on each eight (8) hour period at the Wayneport Coaling Plant since January 11, 1947, until the improper practice is discontinued, shall be compensated at the established rate of pay plus subsequent increases, for this work of which he has been improperly deprived, and.

(c) If the Carrier elects to continue the performance of such work at the Wayneport Coaling Plant the necessary number of positions under proper classification required to meet the needs of the service shall be established and filled under the governing rules of the Telegraphers' Agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of January 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Wayneport Coaling Plant is located 68.3 miles west of Syracuse passenger station and 12.9 miles east of Rochester passenger station on the main line of the Syracuse Division, which division extends from Kirkville on the east to Depew on the west, a distance of 149.8 miles.

Passenger and freight trains, both eastward and westward stop at Wayneport Coaling Plant for the purpose of taking supplies, such as coal, water and sand, also to clean hopper of engine if necessary.

The Carrier requires and/or permits persons not covered by the Telegraphers' Agreement at Wayneport Coaling Plant to transmit and/or receive by telephone, daily, communications of record.

The Telegraphers' Agreement of February 20, 1924, lists two telegraph positions (synonymous with telephone) at Wayneport Coaling Plant, the rate of pay 56 cents an hour. Intermittently since this date telegraph or telephone positions have been there re-established.

Carrier certainly has a right to the protection of records handled by presumably trustworthy employes, from whom it has every right to expect compliance with the rules governing their employment.

Up to the present date, Carrier has not been furnished by Employes with any information as to the recorder of the reported conversations.

5. NEW RULE AS SOUGHT BY EMPLOYES WOULD IMPAIR EFFICIENCY OF CARRIER AND REQUIRE CREATION OF NUMEROUS UNNECESSARY JOBS WITH CONSEQUENT EXCESSIVE COST OF OPERATION.

Carrier wishes to point out that the new rule sought by Employes would confine to Telegraphers only the transmission by telephone of all conversations with Train Dispatchers on behalf of other employes involved in the safe and efficient operation of trains.

Such a rule would, of course, create a large number of jobs, with very limited duties, at a great cost to Carrier.

It would likewise hamper the operation of trains in view of the necessity of all employes contacting a telegrapher in order to relay to a Dispatcher, or vice versa, information necessary for expeditious handling of the railroad business.

CONCLUSION

The question before your Board is, in the opinion of Carrier, answered definitely in the language of Award No. 700, a case involving one of our System properties, wherein you stated:

> "The use of company telephone lines by or between Division Officers, Chief Clerk to General Manager, Chief Dispatcher, Train Dispatchers and Assistant Yardmasters, or other employes, in connection with matters under their jurisdiction, is also no different from the recognized practice in effect on this and other railroads."
>
> "As shown by the record in this case, there is no rule in the Telegraphers' Agreement restricting the right of the Carrier to have employes other than those covered by that Agreement handle messages and reports over the telephone; nor any rule prohibiting telephone conversations by and between officers, dispatchers, assistant yardmasters, and/or other employes; nor prohibition of train and yard men obtaining permission from a telegrapher by telephone to use a designated track, or report when clear of same. See Awards 652 and 653."

For the reasons set forth above, the Carrier respectfully requests the Third Division to deny the claim of the Employes.

Exhibits not reproduced.

OPINION OF BOARD: Since the year 1921, the Carrier has maintained a coaling station at Wayneport, New York, for servicing such freight or passenger locomotives as might need coal, sand, water, etc., at that point. Petitioner contends that in the Telegraphers' Agreement, effective February 20, 1924, two Telegraphers' positions were scheduled at that point; while the Carrier states that, at that time, no such positions were so listed, but were listed at Wayneport Station, location 1½ miles east of the coaling station, and that two Telegrapher-Clerks' positions were then listed at Wayneport "FT", located west of the coal chute. However, this may be, these positions were discontinued in the spring of 1925, and since that time no Telegrapher positions have been in existence at said coaling station, and all work of said station has been performed by employes not covered by the Telegraphers' Agreement, and without complaint, until this claim was presented on the Carrier's property, in January, 1947.

On January 29, 1947, Petitioner's General Chairman in that district, directed a letter to the Carrier's Assistant General Manager, claiming that a

condition existed at Wayneport Coaling Station, which constituted a violation of the Scope Rule of the Telegraphers' Agreement, and cited nine specific instances, occurring between January 6 and 22, 1947, both inclusive, when employes, not covered by said Agreement, performed Telegraphers' work. Subsequently, and at the hearing before this Board, Petitioner filed a long list of alleged like instances, occurring between April 19, and November 20, 1947, as illustrating the practice at said coaling station. A question is raised by the Carrier, as to the propriety and right of the Petitioner to use the information contained in said lists, but we do not think this Board has the power to exclude such information on the grounds asserted.

It is contended by the Petitioner, that lists of work performed on said dates, so filed, show that what the employes did at Wayneport Coal Station, consisted, in some part, of issuing train orders, which it avers was Telegraphers' work, and, necessarily, work of which a record should have been and was kept. The Carrier's position on this point is somewhat vague, and, as we understand it, is not a denial that these telephone conversations occurred, or that in a comparatively few instances employe actions were directed thereby; but it says that such work as its employes did at the coaling station was incident and attached to their regular assignment, and that only in a few, if any, instances was any record of telephone conversations kept or required to be kept, and that it has been unable to find in its files any records of the conversations on which this claim is based.

Beginning with February 20, 1924, there have been four Agreements between the Petitioner and Carrier, and in each of which the Scope Rule is designated as Rule 1. The first was made effective as of February 20, 1924; the second, May 1, 1926; the third, May 16, 1928; and the fourth and current Agreement, on January 1, 1940. Each of the four Agreements specifically names the positions intended to be covered thereby, and following which is used the language "as shown in attached wage scale," indicating, of course, that a schedule of positions and the wage scale therefor was attached to the Agreement, and, as the Carrier contends, was a part thereof. On the basis of this contention, the Carrier claims that, inasmuch as Telegraphers' positions at Wayneport Coaling Station have not been scheduled in any of the Agreements, since they were discontinued in 1925, it should not, in the absence of an Agreement, be required to now establish such position, or be required to assume the equivalent burden which sustaining the present claim would entail.

The Scope Rule of the controlling Agreement, reads as follows:

> "This agreement will govern the employment and compensation of telegraphers, telephone operators (except switchboard operators), agent telegraphers, agent telephoners, towermen, levermen, tower and train directors, block operators, agents, assistant agents, wire chiefs, telegrapher-levermen and telephoner-levermen, as shown in attached wage scale, hereinafter referred to as employes."

The docket shows that the Carrier maintains along its line, at close distances, telephone stations or booths, which are in emergency situations used by all types of employes having anything to do with the supervision of track, the operation of trains, or otherwise; and it seems to be conceded that employes, outside of the Agreement, may use these facilities, so long as it is not necessary that a record of such use be kept. The present claim is that employes, working under other Agreements, were permitted and required "to perform telephone operator service of record which is covered by said Telegraphers' Agreement." Therefore, one of the two important questions here presented is whether the telephone work performed at the Wayneport Coaling Station, by employes not covered by said Agreement, was "telephone operator service of record."

We follow a sound principle when we confine our discussions on this point to the alleged violations of the Agreement, prior to the date the claim was presented on the property. When we do this, we are limited to the instances mentioned in the General Chairman's letter of January 29, 1947.

Examination of that letter develops the fact that the telephone messages were transmitted by employes to train dispatchers, and by train dispatchers to other employes. Some of them directed that cars be picked up; others were inquiries as to the location of trains; still others asked for information and for contact with train employes. We do not think any of them constituted orders for the movement of trains, in the common acceptation of that expression, which, of course, would be Telegraphers' work, and which, by practice, a telephone operator could do. See Award No. 3114 of this Division. Not being train orders, there was not, in our opinion, any necessity that any record of these conversations be kept; and this being true, employes not covered by the Agreement could conduct them. We are not here dealing with a dispute where Telegraphers formerly performed the work, and their positions were discontinued, abolished, or a reclassification, to their prejudice, made, such as existed in cases covered by Awards of this Division, Nos. 2088, 3410, 3524, 3658, 3738 and 3777, cited by Petitioner. It is not clear that Telegraphers ever worked at Wayneport Coaling Station, and certain it is that they have not worked there since 1925. What Petitioner is seeking is to have Telegrapher positions established at that point, and for compensation from the date when, as it contends, they should have been established, namely, on January 11,1947, the effect of which would be to add to the wage scale, referred to in the Scope Rule of the Agreement, the names of those positions, and change the Agreement to that extent. This brings us to the question of whether, in the absence of negotiation and agreement, this can be done.

There has always been a telephone at Wayneport Coaling Station, but whether Telegraphers have ever worked at that point is disputed. If they did so work, that work was discontinued in the spring of 1925. Subsequent to that date, three Agreements have been made: one in 1926, one in 1928, and the third and current, in 1940. To each of these Agreements a wage scale, or Schedule of Wage Rates was attached, showing the positions covered thereby, with a classification of positions, their location, and the hourly rate of wage for each, and on none of which a position at Wayneport Coaling Station appears. This wage scale was, in effect, made a part of the Agreement. If a Telegrapher position had been scheduled at said coaling station, Telegraphers would have been entitled to perform the work of such position, and this would apply to any increase of force, or partial reduction of force. But we think the matter of the establishment of such position should be settled by negotiation and agreement, particularly after the long lapse of time, during which the practice was not to employ Telegraphers at that point. It may be, that developments in the use of telephone communications in the handling of trains, calls for some change in the practice heretofore prevailing; but we think that should be brought about by negotiation and agreement on the property, rather than by an appeal to this Board to make the change. This Board does not possess the power to change contracts, directly or indirectly.

Many awards of this Division hold that not all telephone work comes within the Telegraphers' Agreement. See Awards Nos. 603, 652, 653, 700, 1145, 1320, 1396, 1553, 1983 and 2090. In Award No. 1983, this Division held:

> "It will be noted that before the items of work become exclusively the property of the Telegraphers under the scope rule that the items must be 'of record,' which means that the conversations are important enough in the operation of the railroad to be made matters of the record. The best example of this is in relation to transmission of train orders."

These awards may serve to explain the long existing practice at Wayneport Cooling Station, and the apparent acquiescence of the Petitioner therein, for it is not probable that such practices were kept secret, or did not come to the notice of the Petitioner over so long a period of time.

Then, as tending to explain this long acquiescence, it should be noted that in the 1928 Agreement, and in the current Agreement of 1940, Teleg-

rapher positions were scheduled at Wayneport Station, 1½ miles east of the coaling station, and at Wayneport SS 20-3, 1 mile west of said station, and we think it fair to assume that telephone communications "of record" were handled through said points. This fact is not referred to as having any direct bearing on the claim before us, but as indicating that there was, at the dates of said Agreements, no apparent need for, nor any demand by the Organization for, a Telegrapher at the coaling station to handle telephone messages "of record", and as tending to explain why a similar position has never been scheduled for the coaling station.

On the question of the importance to be given to the current Agreement, and the wage scale attached thereto, this Division, in Award No. 389, has said:

> "Since the actual scope of an agreement can be made as broad or as narrow as the parties may stipulate, the positions thus listed must be taken as the concrete expression of the carrier and its employes with respect to the effective scope of the agreement. It is not within the authority of this Board to alter the terms of an agreement either by including positions not covered thereby or by excluding positions embraced therein."

See also: Awards of this Division Nos. 383, 507, 522, 1145, 1230, 1320, 1568, 1609 and 2496.

As indicated above, the development and expansion of telephone communications in the operation of railways, including this Carrier, may call for some adjustments, but they should be brought about by negotiation and agreement. Sustaining the present claim would leave the situation in a state of confusion, for it could not be said how far the ruling could be extended. In view of the long existence of the present practices, and Petitioner's apparent acquiescence therein, coupled with the Agreement and the Wage Scale attached thereto, we are of the clear opinion that the situation existing on the Carrier's property, illustrated by this claim, is one calling for negotiation and agreement, and that this Board does not possess the power to make a change in the existing agreement, such as sustaining the claim would involve. We therefore hold that there has been no violation of the Agreement, and the claim is denied.

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 21, 1934;

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

That there has been no violation of the Agreement.

AWARD

Claim ((a), (b), (c),) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1948.