

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West of Buffalo)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad Company, Line West of Buffalo, that:

(1) The Carrier violates the provisions of the Telegraphers' Agreement when it allows employees who have no seniority under the Telegraphers' Agreement to report, transmit, receive, or deliver orders and/or communications pertaining to or affecting train movements, or to transmit and/or receive communications of record at Mina, Ohio, all of which is work covered by the Telegraphers' Agreement.

(2) That the Carrier be required to create and establish enough positions at Mina to perform this work and advertise same as provided in Article 27 of the Telegraphers' Agreement in order that employees covered thereby may apply for same in accordance with their seniority rights.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the parties bearing effective date of July 1, 1946 as to rules of working conditions, copy of which is on file with the Board and by reference is made a part of this Statement of Facts.

Mina, Ohio, 62.2 miles west of Toledo, Ohio; Edgerton, Ohio, 1.7 miles west of Mina; and Edgerton Switch, Ohio, 1.3 miles west of Edgerton are intermediate points on the Toledo Division. Edgerton Switch is the name shown in the Telegraphers' Agreement but is shown in the Railroad Time Table as "MN" Signal Station. Edgerton Switch is a continuously operated office with Telegrapher-Switch Tenders on first, second, and third tricks, all covered by the Telegraphers' Agreement. Edgerton is a freight and passenger station which is open only during the day time. Mina is a continuously operated Coaling Station, Bunk room, and terminal for additional brakemen required on freight trains in the State of Indiana consisting of 70 cars or more. It is also a terminal for all engineers, firemen, conductors, and brakemen on trains A. L. 83, A. L. 87, A. L. 82 and A. L. 86, which are way freights operating between Elkhart, Indiana and Air Line Junction, Ohio. There are no employees at Mina covered by the Telegraphers' Agreement.

At Mina the Carrier maintains a train dispatchers' telephone circuit and also a message telephone circuit, both of which are in constant connection with all other stations and offices between Toledo, Ohio and Elkhart, Indiana, a distance of 133 miles. Prior to March 27, 1947, an auxiliary telephone

2. Telephone conversations to and from a point where no telegrapher is employed, between trainmen, enginemen or other employes and nearest telegrapher, or train dispatcher under certain conditions, is simply ordinary railroad operation and not violative of any agreement.
3. The claim is clearly an attempt to force the carrier to establish telegraphers' positions where none are required and could not possibly serve any useful purpose. It is clearly a make-work demand.
4. The entire claim is unfounded, wholly at variance with efficient, intelligent operation, is not supported by any rule, practice or precedent or on any technical or logical premise, and should be summarily denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Mina Coal Dock, an intermediate point on Carrier's Toledo Division, is situated about three miles east of Edgerton Switch (designated as MN signal station). MN is a continuously-operated office with telegraph switch tenders on first, second and third tricks, all covered by the Telegraphers' Agreement. Mina is a continuously-operated coaling station and is also used as a terminal for additional brakemen required in the State of Indiana on freights consisting of seventy cars or more and for other purposes as appears in the Employes' and Carrier's statement of facts. The coal dock was placed in service in 1907 and since that time has been used for servicing steam locomotives. Before 1910, the telegraph office now at Edgerton Switch was located at Mina near the coal dock, having been moved because of the extension of the four track section on the main line at that time. Since 1910, there have been no telegraphers' positions at Mina. On August 6, 1946, the Organization complained to the Carrier that the Coal Dock Foreman, Conductors, Brakemen, Engineers and Firemen were performing communication work at Mina, principally with train dispatchers at Toledo by means of telephone and requested that this communication work be assigned to employes covered by the Telegraphers' Agreement by establishing enough positions at Mina to perform such work. The Carrier did not accede to that demand, but on March 27, 1947, extended the Mina-Edgerton auxiliary phone to Edgerton Switch and instructed the operators at MN to act as Relay Operators between the train dispatchers and others at Toledo at one end and the Engineers, Firemen, Conductors, Brakemen and Coal Dock Men at Mina on the other end. The Organization refused to recognize this action of the Carrier as a compliance with the Agreement and requests this Board to require the Carrier to create and establish enough positions under the Telegraphers' Agreement at Mina to perform the work of handling communications there.

The development of the use of the telephone as a means of communication has lead to a great deal of confusion with respect to the applicability of the scope rules of the Telegraphers' Agreement. There have been a number of awards of this Board bearing on the question of what is or is not covered by the scope rule. It is clear despite the different holding of these awards and the irreconcilable features and divergent principles set forth therein that it is recognized that the use of the telephone on the railroad is not an exclusive function of employes covered by the Telegraphers' Agreement. The difficulty is to differentiate between telephone work which belongs to telegraphers under the scope rule and that which doesn't.

In an Award (3671) of this Division which indicates that careful review of decisions of this Board on this subject had been made before its being handed down, we find the following language: "Although we have said many times that the use of the telephone is not to be confined to operators, we believe that it is the intent of the scope rule to continue to give to operators the transmission (including the receipt) of matters of record, at least when operators are readily available." In that case the Board sustained a claim for a call, but was careful to point out that with any variance in the facts, it might have held differently. There is a variance in the facts in that case and those in the subject case in that there was an operator available there

and the communication involved was a train line-up. Neither of those features are present in the instant case.

Of significance in this case is the fact that this situation was existent at Mina Coal Dock for thirty-six years before claim was made. During that time we find that nine agreements have been negotiated between the parties hereto and each of those agreements contained a list of positions covered thereby. In all that time apparently no attempt was made by the Order to include any positions at Mina when the mine agreements were being negotiated. We agree with the Employees that the list of positions contained in the various agreements is not a limitation on the scope rule and the fact of the non-inclusion of a position at a particular place on such lists standing alone cannot by itself defeat a claim that new positions should be established under the scope and new position rules, any more than the inclusion of a position in such lists prevents the Carrier from discontinuing or abolishing a position. Here, however, we find a practice existent for thirty-six years prior to any complaint by the Employees. If they did not know what was going on at Mina in 1910 certainly they must be presumed to have had knowledge of the situation by 1919 and since that time six agreements were negotiated with the Carrier. The record reveals no protest or attempt to have a telegrapher's position established at Mina at the time of negotiating said agreements. In Award No. 4050, this Board considering a similar situation on the Eastern Division of this same Carrier and involving the same Organization, the Board said:

"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, the 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."

We subscribe to the reasoning set forth in the quoted language and consider it controlling in this instance. Accordingly, we 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 Employee 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 there has been no violation of the Agreement.

AWARD

Claims (1) and (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1948.