

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

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 Railroad Company, Buffalo and East, that

(a) the duties of operating a block by the use of the telephone, governing the movements of trains and/or motor cars is work covered by the scope rule of the Telegraphers' Agreement (block operator classification) and that such duties shall be performed by employees under the said Telegraphers' Agreement;

(b) the Carrier violated and continues to violate the rules of the Telegraphers' Agreement when and because beginning December 1, 1947, it unilaterally inaugurated the practice of requiring operators of track motor cars, persons outside of the Telegraphers' Agreement, to operate blocks by the use of the telephone, governing the movement of motor cars, at locations where an employee under the Telegraphers' Agreement is not employed, and

(c) if the Carrier elects to continue this practice, the work of blocking track motor cars shall be assigned to and performed by employees covered by the Telegraphers' Agreement under the governing rules of the said agreement.

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

On November 25, 1947, a notice was issued by the Chief Signalman (Mr. E. H. Mulligan) of the Syracuse Division, to all Signalmen (telegraph employees) that effective at 12:01 A. M., December 1, 1947, all track motor cars must be carried on block record sheets, showing number of motor car, time operator of track motor car received block, also time motor car cleared block. Furthermore, telegraph employees must not allow a train or engine to follow a track motor car into block until such motor car has reported clear of the block.

The Syracuse Division main line extends from Kirkville, New York, on the East to Depew, New York, on the West, a distance of approximately 150 miles. The right of way on this division comprises four or more main line tracks, except for approximately three miles at a point east of Syracuse, New York, where there are two main line tracks.

"The matter involved in these paragraphs is a 'Form M' which the Organization contends is a train order while the Carrier names it a 'Motor Car Permit'. It is issued by 'Signalmen' (telegraphers) to operators of track motor cars, particularly section foremen, authorizing the motor car to use a main track. When the telegrapher himself signs the permit and gives it to the track-car operator, the Organization is satisfied that the Train Order Rule is being observed. The objection arises when a track-car operator telephones in to the telegrapher asking permission to use the track to return to his home station. When this permission is given by phone, the operator fills in the form and signs the telegrapher's name.

This securing of permission by telephone, as well as the notification a car operator gives to the telegrapher by phone that he has cleared the track by taking the car off, the Organization considers handling train orders. It claims this is exclusively telegraphers' work and if it is done by section foremen or other operators of motor cars where no telegrapher is employed, the senior idle employee under the agreement should be allowed a day's pay for each occasion when the telephone is so used. Obviously, the Carrier could not have a telegrapher on every track car, and the Organization does not ask this. It would merely impose a penalty which the Carrier would be unable to avoid." (Emphasis added.)

The Board definitely denied the rule requested by the Employees under which a senior idle employee could claim a day's pay for each occasion on which a person other than a telegrapher performed "the duties of operating a block by the use of the telephone, governing the movements of trains and/or motor cars", this language being quoted from Section (a) of the Employees' Claim in this case.

Carrier therefore maintains that the issue involved in this case was before the Board of Arbitration, was denied by said Board and must be denied by the National Railroad Adjustment Board.

5. ISSUE HAS BEEN DISPOSED OF AND CLAIM SHOULD BE DENIED.

Inasmuch as the issue has been disposed of by the Board of Arbitration and the awarded scope rule has been in effect since July 1, 1948, it is clearly apparent that the request of the Employees in Section (c) of the claim cannot be considered by the Adjustment Board. Section (c) demands that "if the Carrier elects to continue this practice, the work of blocking track motor cars shall be assigned to and performed by employees covered by the Telegraphers' Agreement". If the Adjustment Board were to sustain the claim its award would clash head-on with the award of the Board of Arbitration. The Adjustment Board can therefore do nothing else but deny this claim, just as it denied the claim of the Employees in Docket TE-3984, which involved an issue that had many similar aspects. Award No. 4050 in that case denied the claim of our Line East Telegraphers that "communications service" at Wayneport Coaling Plant belonged exclusively to telegraphers. In that case Referee Fox definitely indicated that there is no impropriety in handling "telephone communications of record" through telegraphers. This is exactly what is being done in the instant case.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim based on alleged violation of the Telegraphers' Agreement, effective January 1, 1940, involves no money. The Agreement in question having been superseded by the Agreement effective July 1, 1948, the Board finds no necessity to interpret the provisions of an Agreement that was terminated by the action of the parties. The case should be dismissed.

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 the case will be dismissed in accordance with the Opinion.

AWARD

Case dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of April, 1949.