

Award No. 4394

Docket No. TE-4239

**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, Buffalo and East, that

(a) The Carrier violated the Scope Rule of the Telegraphers' Agreement on the following dates: November 10, 12, 14 and 19, 1947, when it permitted or required train service employes not under the Telegraphers' Agreement to perform Block Operator and Telephone Operator duties at Lycoming, New York, thereby performing communications service of record at a time that the agent-telegrapher was available but not on duty, and

(b) In consequence thereof, the Carrier shall now be required to pay "call" service (Rule 5 of the Telegraphers' Agreement) to the incumbent of the agent-telegrapher position at Lycoming, New York, on each occasion that he was not used.

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

Lycoming, New York, on the St. Lawrence Division, is a one-man station employing an agent-telegrapher whose assigned hours are from 7:00 A. M. to 4:00 P. M. with one hour for lunch, daily except Sundays and holidays.

On the dates shown in the Statement of Claim and on subsequent dates, at Lycoming, the Carrier required and/or permitted train service employes who are not covered by the Telegraphers' Agreement to handle and perform work coming under the Scope Rule of the Telegraphers' Agreement, such as reporting the consist of the train, block operator duties and other communications service of record, outside the regular hours of the agent-telegrapher.

The claimant, C. I. Dodge, lives in Lycoming, and was available for the "call" service on the dates in question. He has complied with the Carrier's Operating Rule 854 in this respect.

The Organization in behalf of the claimant, filed with the Carrier, claims for a "call" payment under Rule 5 for each of the Carrier's improper acts. The claims were denied.

determine on what track the train was to be yarded upon arrival at Oswego West Yard. On other occasions, this information is obtained by a member of the train crew when the train arrives at Paul, the yard limit of Oswego yard, where no operator is employed, but on the dates in question the information was obtained at Lycoming in lieu of obtaining the information at Paul.

It will be readily apparent to your Board that no blocking was required in the operation from Pulaski to Oswego West Yard and consequently there could be no block operator duties performed by a member of the train crew.

Insofar as the obtaining of information as to the track on which the train was to be yarded is concerned, this is not service belonging exclusively to telephone operators and there is no rule in the Telegraphers' Agreement that would require the employment of a telephone operator to obtain the information.

CONCLUSION

The Carrier has conclusively established that the claim of the Employees is not supported by any rules of the current agreement and should, therefore, be denied.

OPINION OF BOARD: The statements of the parties are so conflicting as to claimant's point of residence, posting of card in office window showing where he may be found, character of telephone communications, and whether or not they were matters of record, that the Board finds it impossible to reconcile the facts and render a decision. Therefore, the case should be remanded to the parties for development of facts and disposition on the property.

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 remanded.

AWARD

Case remanded.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1949.