

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Cincinnati, New Orleans & Texas Pacific Railway Company,

(1) That the Carrier violated and continues to violate the scope rule of the telegraphers' agreement when, on October 14 and 16, 1947, it unilaterally removed from said agreement and from the seniority of employees covered by said agreement the work of operating signals and switches at "US" Junction tower, "KD" tower, and "FR" Flat Rock tower, and assigned this work to employees not under the telegraphers' agreement; and,

(2) That the work of the operation of signals and switches at these points shall be restored to the telegraphers' agreement and to employees covered by the agreement, and all employees covered by the telegraphers' agreement who have been adversely affected by this violative act of the Carrier shall be retroactively compensated for any wage loss suffered thereby.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date March 1, 1928, revised as of May 1, 1948, as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

Prior to October 14 and 16, 1947, train movements on that part of the Carrier's main line lying between U. S. Junction, Ky., and Flat Rock, Ky., a single track portion, were principally handled by three telegrapher-levermen at U. S. Junction tower, three telegrapher-levermen at "KD" tower, and three telegrapher-levermen at Flat Rock tower, under the direction of train dispatchers.

Effective October 14 and 16, 1947, the above mentioned nine positions of telegrapher-levermen were discontinued and all of the work of operating signals and switches from those three towers was transferred to a newly installed electric centralized interlocking machine at Somerset, Ky., 5.5. miles north of the controlled territory.

Prior to the opening of the newly created electric centralized interlocking machine at Somerset, the General Committee of The Order of Railroad Telegraphers made claim for the positions necessary for its manual operation on the ground that the work of operating signals and switches by means of a device from a central point belongs exclusively to employees covered by the telegraphers' agreement under the scope rule of same and

The General Chairman of Telegraphers, in his letter of August 21, 1946 (Carrier's Exhibit C-3), stated: "We have the right to operate C.T.C. machines in all instances." Throughout the exchange of correspondence between the carrier and the General Chairman (Carrier's Exhibits C-1 to C-10) the Telegraphers have insisted that they shall operate all C.T.C. machines, and the carrier has just as strongly insisted that they do not have such right. The carrier has never agreed or even intimated that telegraphers shall have the right to operate C.T.C. machines in all instances.

The Interstate Commerce Commission has defined C.T.C. as a system of railway operation which does not require the use of train orders. It is the duty and responsibility of the train dispatcher to issue train orders, as he is primarily responsible for the movement of trains. The conclusion is therefore inescapable that when the C.T.C. system takes the place of train orders the train dispatcher in operating the C.T.C. machine is directing trains by a different method, and the setting up of routes, meets and passing of trains on the control board are merely incidental to his duties and responsibilities as a dispatcher. If the control board is located at a point on the division other than the point at which dispatchers are located, and the board is operated by employees not covered by the Dispatchers' agreement, all train movements in that territory must be by or under the direction of the train dispatchers. In other words, the dispatcher's authority continues without interruption.

(9) Further, it is the carrier's position that this dispute involves the rights of train dispatchers who are performing the work claimed by telegraphers in this case. In the event the Board takes jurisdiction of this case, carrier respectfully requests that the Board give due notice to train dispatchers, represented by the American Train Dispatchers Association, granting their representatives an opportunity to appear before the Board and to present such evidence as they may deem necessary and advisable, and that such evidence be made a part of the record in this case.

(10) Copies of all pertinent correspondence exchanged between the carrier and General Chairman of Telegraphers regarding the claim in this case are attached as "Carrier's Exhibits C-1 to C-10".

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to October 14, 1947, train movements between U. S. Junction, Kentucky, and Flat Rock, Kentucky, were handled principally by three telegrapher-levermen at U. S. Junction, three telegrapher-levermen at "KD" tower, and three at Flat Rock tower, under the direction of train dispatchers. On or about October 14, 1947, the Carrier placed an electric centralized traffic control installation in operation between U. S. Junction and Flat Rock, a distance of 18.9 miles. The nine positions of telegrapher-levermen at U. S. Junction, "KD" tower and Flat Rock tower were abolished. Thereafter, the signals and switches at these points were controlled by the CTC machine at Somerset, Kentucky, which was located 5.5 miles north of the controlled territory. The work of operating the CTC machine at Somerset was assigned to dispatchers by the Carrier. It is the contention of the Organization that this work belongs to the telegraphers. The claim is that this work be returned to the telegraphers and that retro-active compensation be paid to employees who have suffered wage loss thereby.

It is the contention of the Organization that the work in question belongs to the telegraphers under the Scope Rule of the Telegraphers' Agreement. This rule states:

"This schedule applies to all telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, tower-levermen listed herein or analogous positions hereafter established, block operators and staffmen, also such station agents, assistant station agents, and ticket agents as are listed herein. The word 'employee' as used in the rules will apply to all of the foregoing classes, and employees will be classified according to duties performed."

Article 1, Agreement effective March 1, 1928.

It is evident from a reading of the foregoing Scope Rule that work incident to the operation of a CTC installation is not specifically mentioned. The Organization contends that the definition of the word "leverman" and "towerman" as used in the industry, includes those charged with the operation of CTC machines.

The Director General of Railroads in his Interpretation No. 4 to Supplement No. 13 to General Order No. 27, under date of April 30, 1919, defined the terms "towerman" and "leverman" as follows:

"The term 'towerman' is synonymous with 'leverman', and both are required to operate interlocked switches and/or signals by means of levers from a central point."

By construing the definition set forth with the Scope Rule, the Organization asserts that the work of operating a CTC machine is the work of a towerman or leverman and within the scope of the Telegraphers' Agreement.

The Carrier takes the position that the work in question may properly be performed by dispatchers. The parties seem to be in agreement that the performance of all work and functions connected with the movement of trains and other mobile equipment whether accomplished by train order, signal indications, or by verbal telegraphic or telephonic instructions to telegraphers, telephoners, operators, signalmen, towermen or others, or by any other method, is work covered by the Dispatchers' Agreement.

A Centralized Traffic Control system has been defined, and correctly we think, as follows:

"A term applied to a system of railway operation by means of which the movement of trains over routes and through blocks on a designated section of track or tracks is directed by signals controlled from a designated point, superseding time-table superiority of trains, and without requiring the use of train orders."

For the reasons which are presently to follow, we cannot find from the agreements before us that the work of manning CTC machines is exclusively the work of dispatchers or telegraphers. It must be borne in mind that when the Scope Rule of the Telegraphers' Agreement was negotiated, CTC installations were unknown and consequently not contemplated by the signatories to that Agreement. It is clear to this Board that the definition of a towerman or leverman heretofore recited contemplated the handling of signals, switches and mechanical interlocking equipment from a tower under the general direction of a dispatcher by the train order method. By the accepted definition, a towerman or leverman operates interlocked switches and signals from a central point as does the operator of a CTC machine. The definition of a towerman or leverman, however, contains the additional limiting words "by means of levers", a limitation wholly foreign to a CTC machine which operates automatically without the use of levers. The work of a towerman or leverman is necessarily restricted in the scope of its operation to the vicinity of the tower. A CTC operation is handled from a central point and controls large sections of a railroad line. Its scope of operation is much greater. It is automatically controlled and eliminates the train order method of handling trains. The Telegraphers' Agreement clearly includes the work of towerman and leverman. They naturally belong there because of the necessity for handling train orders in connection with their work. We cannot say that the operation of a CTC machine, which eliminates train order control and consequently one of the most descriptive elements of a telegrapher's work, is included in the scope of the Telegraphers' Agreement because it includes towermen and levermen. Neither do we find anything in this record which indicates that the work belongs exclusively to the Dispatchers. Both the telegraphers and dispatchers have attempted to negotiate more specific scope rules to include the work. The Carrier has refused to negotiate except jointly with the two Organizations.

We think the matter constitutes a jurisdictional dispute. It is a dispute of long standing on this and other railroads. It has resulted in mediation on some other Carriers where the situation has been similar to the one we have before us. Awards 641, 2804. The record indicates that this work has by agreement or arbitration been negotiated on other Carriers by the Telegraphers and Dispatchers without consistency of result. This is evidence only of the jurisdictional nature of the dispute. There must be an agreement with reference to the work before this Board has jurisdiction to act, this Board being solely an interpreting agency under the law creating it. The dispute will, therefore, be remanded for negotiation between the Carrier, the Telegraphers and the Dispatchers and, in case of failure, the National Mediation Board and not this Board constitutes the proper forum for its final settlement.

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 Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934; and

That the National Railroad Adjustment Board is without jurisdiction to hear the dispute.

AWARD

Case remanded in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1949.