

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD
(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 provisions of the Telegraphers' Agreement when and because it required or permitted the Stationmaster and/or other employees at Rochester, New York who do not come under the Telegraphers' Agreement to use the Train Dispatcher's telephone circuit to "OS" trains (of which a record is made on the train dispatcher's train movement sheet) and handle communications service of record, on February 10, 1949.

(b) in consequence thereof the Carrier shall now be required to pay Extraman Anthony Crisci who was idle, available, willing and able to perform this work coming under the Scope Rule of the Telegraphers' Agreement, a day's pay at the minimum rate in effect on the Seniority District covered by the schedule for this work denied him on this date.

EMPLOYEE'S STATEMENT OF FACTS: An Agreement by and between the parties, herein referred to as The Telegraphers' Agreement, bearing effective date of July 1 1948 is in evidence covering working rules and October 1, 1948 as to rates of pay; copies thereof are on file with the National Railroad Adjustment Board.

There was a derailment at or near Rochester, New York at approximately 12:00 midnight on the night of February 9, 1949 which blocked tracks 1, 2, and 3 of the four track main line which made it necessary that all west bound trains move over track No. 4 against the current of traffic west bound. Track No. 4 is an east bound track.

During this time in the morning hours of February 10, 1949, Rochester Stationmaster's Office was set up as the communications office to handle the train movements by orders, messages of record and "OS" work which is the usual work of telegraph schedule employees.

Instead of arranging for a telegraph schedule employee to perform the communications service of record and using Extraman Anthony Crisci who was not working and was awaiting orders to work under the provisions of the Telegraphers' Agreement, the Carrier required or permitted the Stationmaster at Rochester and/or other employees not covered by Telegraphers' Agreement to hand the work covered by the Telegraphers' Schedule.

'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 there-in, 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 the 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."

CONCLUSION: The question before your Board is answered definitely in the language of Awards Nos. 700, 4050 and 4208, which are comparable cases, and the claim of the Employees in the instant claim must, therefore, be denied.

OPINION OF BOARD: At midnight on February 9, 1949, a train was derailed at Signal Station 29 at Rochester, New York, blocking tracks 1, 2 and 3. Track 4, carrying eastbound trains was the only main line track that remained open. For about seven hours westbound trains were operated between Signal Stations 27 and 29 against traffic. These stations are 1.9 miles apart and are within the yard limits of Rochester Yard. After the derailment, the train dispatcher at Syracuse instructed the stationmaster at Rochester by telephone to move westbound trains over track 4 until normal operations could be resumed. The stationmaster made multiple notices of these instructions and handed a copy to the conductor and engineer of each train involved. The instructions were signed with the initials of the dispatcher and were as follows: "C&E All West bound trains. Rochester, New York. Use Track 4 from SS-27 to SS-29 proceeding slow and carefully by derailment at Hague St. at a speed not more than 15 miles per hour. Protection provided." The Organization contends that this is a train order and therefore telegraphers' work. It also contended that the stationmaster was required to "OS" trains during this period. It is also claimed that the train dispatcher transmitted train line-ups direct to the stationmaster by telephone. It is contended that claimant, an extra telegrapher, should have been given this work. He claims a day's pay at the minimum rate.

The applicable rule is Article 22, current Agreement, which in part says:

"No employe other than covered by this Agreement and train dispatchers will be permitted to handle train orders except in cases of emergency."

This has been construed to mean that the handling of all communications of record including train orders and line-ups is work belonging to telegraphers whether it is handled by telegraph or telephone. The work claimed in the present case was performed by telephone. We are committed to the rule that the use of the telephone in the performance of work which historically and traditionally belonged to telegraphers is within the scope rule of the Telegraphers' Agreement. Award 4516. Consequently, the handling of train orders, the sending or receiving of train line-ups, and the handling of communications of record are reserved to the telegraphers.

The record shows that three telegrapher positions working around the clock were assigned to Signal Station 27. They received instructions to route westbound trains over track 4. Signal Station 27 was an interlocking which controlled the movement of all trains entering and leaving Rochester passenger station. The Carrier contends that the necessary train orders were sent to Signal Station 27 and that the telephone conversations between the dispatcher and the stationmaster were those ordinarily carried on by a stationmaster in performing the duties of his position. The Carrier urges that the communication was not a train order for the reason that it was not recorded by the dispatcher, that it carried no train order number, that it was not written on forms prescribed by the operating rules, and that the train movements took place in the Rochester Yard where train orders were not required. Irrespective of these evidences that the instructions given were not in the form of a train order, we think that it was such. It authorized the movement of trains against the current flow of traffic, it contained a speed restriction, it was issued by the dispatcher and was signed with his initials, and it was copied and delivered to all engineers and conductors on the trains passing over track 4. It is in fact a train order controlling the movement of trains. Award 3397. We think also that some "OS'ing" was done by the stationmaster, but in view of our holding that train orders were handled by persons not under the Agreement as claimed by the Organization, no reason exists for a detailed discussion of this point. A sustaining award is required.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of June, 1950.