

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro, 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 Company, Buffalo and East, that

(a) the Carrier violated the terms of the Telegraphers' Agreement when and because on May 26, 1949, it unilaterally discontinued the position of second trick telegrapher-leverman at Signal Station 24, Little Falls, New York, as the work of the position was not abolished in fact but remained to be performed.

(b) The Carrier further violated the terms of the Telegraphers' Agreement by permitting or requiring an employe not coming under the said Agreement at Little Falls Passenger Station to perform the telegrapher-leverman work commencing May 26, 1949.

(c) The work shall be restored to the incumbent of the position of second trick telegrapher-leverman at Little Falls who was improperly relieved of such work at the time it was arbitrarily discontinued on May 26, 1949, and he shall be paid for all loss of wages, plus travel and waiting time and other necessary expenses that were incurred, and

(d) All other employes who may have been adversely affected as a result of this improper action on the part of the Carrier shall be compensated for any loss of wages they may have sustained, plus travel and waiting time, and any other expenses incurred because of the discontinuance of this position.

(e) The rate of pay of the ticket agent-telegrapher at Little Falls shall be increased two (2¢) cents an hour commencing May 26, 1949, as provided under Article 20 (d) of the agreement account increased duties and responsibilities.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties effective July 1, 1948, amended September 1, 1949, is in effect, hereinafter referred to as the Telegraphers' Agreement; copies thereof are on file with the National Railroad Adjustment Board.

For many years prior to May 26, 1949, Signal Station 24 at Little Falls, New York, on the Mohawk Division has been included in the wage scale of the Telegraphers' Agreement. Three positions classified as Telegrapher-levermen were on duty around the clock at this Signal Station.

than ten minutes of his tour of duty for the protection of those westbound trains.

The record clearly indicates the additional work performed by the Ticket Agent-Telegrapher as the result of closing of Signal Station 24 (maintenance of block sheet and occasional copying of train orders for Trains 902 and 903 until those trains and the work were discontinued on April 30, 1950), and the additional work commencing May 26, 1949 in the operation of the jack-knife switches for protection of scheduled stop west-bound trains required but a maximum of 20 minutes' additional work per day. Carrier points out that that extent of additional work is not definable as a "material increase" in the duties and/or responsibilities of the Ticket Agent-Telegrapher.

Notwithstanding that fact, Carrier showed a willingness to dispose of the case and offered a compromise settlement of 2-cents an hour for the Ticket Agent-Telegrapher at Little Falls to close the entire dispute, which offer was rejected by the Organization. Carrier has no alternative other than to cancel its offer.

Between May 26, 1949 and April 30, 1950 the Ticket Agent-Telegrapher's duties and/or responsibilities were increased by a maximum of twenty minutes' additional work. As of April 30, 1950, when work associated with Trains 902 and 903 was no longer necessary, the Ticket Agent-Telegrapher's duties were reduced by approximately ten minutes' work during each tour of duty he still continuing to operate the jack-knife switches, requiring approximately ten minutes per day.

Carrier further points out that the Organization's claim for 2-cents an hour for the Ticket Agent-Telegrapher at Little Falls, N. Y., presented for the first time in letter to your Board dated June 1, 1950, has not been properly progressed by the Organization, and contends that the question of rate increase is a matter for determination between the parties involved in this dispute.

CONCLUSION

In conclusion, Carrier will repeat its principal contentions, which have been fully explained in this submission.

1. Carrier is entitled to abolish facilities and positions when they are no longer required.
2. There was no violation of any rules of current Telegraphers' Agreement when Signal Station 24 and the three Telegrapher-Levermen's positions were abolished.
3. Operation of jack-knife switches is not exclusive work of employees coming under scope of the Telegraphers' Agreement.
4. Awards of the Third Division support Carrier's position.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to May 26, 1949, Carrier operated Signal Station 24 at the location we are here concerned with. Three (3) telegrapher-levermen were employed around the clock to perform the duties incident to the operation of such station. On page three (3) of Employees' Ex Parte Submission Petitioner alleges the duties of the above described employees "comprised of the responsibility of handling the movement of all trains using the four track main line covering cross-over or straight track operation as well as all train moves on the ten mile Little Falls and Dolgeville Single Track Branch. In addition to this, the telegrapher-levermen at Signal Station 24 controlled all the train movements in and out of Little Falls passenger station."

Carrier also operated at the time above referred to and in close proximity of, but on the opposite side of said tracks, a passenger station at which one (1) employe referred to in Petitioner's Schedule performed his duties during the 5:15 A. M. to 4:15 P. M. Trick and one (1) employe not referred to in Petitioner's Schedule performed his duties during the 4:15 P. M. to 1:15 A. M. Trick.

Carrier averred a portion of the duties performed by said Telegrapher-Levermen consisted of "maintaining block sheet for Trains 902 and 903 operating on the Little Falls and Dolgeville Branch, and occasionally copying a train order when Trains 902 and 903 were annulled and run extra to Dolgeville and return."

On or about May 26, 1949, Carrier abolished the Telegrapher-Levermen positions and also spiked the cross-over switches. Later in June 1950 the switches were removed. At the time said positions were abolished Carrier installed at the passenger station what it terms a jack-knife switch for the purpose of protecting westbound trains. This action on the part of Carrier, i.e., the act of abolishing positions and the act of installing the switch, resulted in additional duties being placed upon the passenger station employe covered by the Schedule but which extra duties were discontinued on or about April 30, 1950, by reason of a change in Carrier's operations. Petitioner lodges no objection to the passenger station employe covered by the Schedule performing the above mentioned added duties except to urge that under said Schedule the wages of such employe be adjusted accordingly.

Petitioner further urged that in fact duties existing under the abolished positions, and being other than those additional duties hereinabove mentioned, continued to exist and should not be performed by those employes not included in the Schedule; that such action on the part of Carrier was repugnant to and constituted a violation of Articles 1 (Scope), 2 (Basic Day), 9 (Suspension of Work Absorbing Overtime), 12 (Guarantee), 13 (Regular Employes Performing Relief Work), 20 (Basis of Pay, Classification, Etc.), 24 (Seniority), 28 (Discontinuance of Positions—Displacement), 33 (Time Claims).

We will first inquire with reference to what the work, other than the hereinabove mentioned additional duties, at the Signal Tower consisted of and whether or not those employes within the Schedule possessed exclusive rights to it and the circumstances surrounding the performance of such work.

Carrier alleges (and this is really an elaboration of Petitioner's remarks found on page three (3) of Employes' Ex Parte Submission hereinbefore mentioned) the Signal Station was north of and adjacent to four (4) main tracks running east and west and that between, in, and around said main tracks were a system of interlocking cross-over switches operated by 35 working levers; further that said employes operated cross-over, industrial siding and control switches from Track 4 of said main tracks. These switches, or rather the levers, were manually operated and we do not think either party hereto would seriously contend the work did not belong exclusively to the employes within the Schedule. Historically and traditionally said work does belong exclusively to such employes although not by reason of any rule or provision of the Schedule as is frequently asserted and claimed, **see Award 615**. We think Petitioner's description of the duties of the abolished position is most excellent and we interpret from such description the basic and fundamental feature to be one of necessity to the operation of the railroad. What we are searching for then is to determine whether or not the basic and fundamental qualities of the duties performed by the individual not referred to in the Schedule do or do not square with the following specification, to wit: the responsible handling of the movement of trains. In connection therewith we wish to remark upon hearing hereof much was said and discussion had with reference to the time required to perform said duties and to the methods used to perform same and to the fact that they concerned only one (1) of the four (4) tracks. We do not believe any or all of such points to be determinative of the matter here. This Board has

held time, method and amount not to be controlling and if by reason of any of such factors Carrier desires to remove work from a craft entitled to protect same it must do so by and through the process of negotiation and agreement.

After a careful consideration of the submissions, the briefs and the arguments made by the respective representatives of the parties hereto the Board concludes and finds the work performed by that employe not within the Schedule to be that class of work to which employes referred to in the Schedule do not have the exclusive right to protect in that the outstanding and basic characteristics are regulatory and protective of train movements, not controlling and governing of same. The physical changes made in the railroad resulted in there being no longer a necessity of the work performed by Signal Station employes.

By reason of an admission by Carrier of additional duties being given to the passenger station employe within the Schedule for a limited period of time and which the Board thinks, after carefully considering all the surrounding facts and circumstances, constituted a material change that for said time such employe should be compensated in such manner as the Schedule provides. In the present state of the record what that should be the Board is unable to determine.

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 Employes involved in this dispute are respectively Carrier and Employes 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

It is accordingly ordered by the Board that claim herein be and it is hereby in all respects denied save and except that it is further ordered by the Board that that portion of said claim with reference to adjustment of a wage rate in regard to the employe at the passenger station and within the Schedule be and it is hereby remanded to the property with instructions the parties hereto within not less than 90 days hereof confer and negotiate relative to a mutually satisfactory settlement and failing to so do report back to this Board with such additional information as is necessary to enable this Board to finally resolve the question involved.

AWARD

An Award will be entered agreeable to the above Opinion and Finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1951.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 5298

Docket No. TE-5223

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: The New York Central Railroad, Buffalo and East.

Upon application of the representatives of the employes involved in the above Award, this Division was requested to interpret the same in the light of an alleged dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934.

The Organization avers the above Award should be construed and interpreted so as to permit and allow the agreed upon added and extra compensation to be paid to the holder of the position in question beyond such time when the communication duties attached to said position were discontinued. It is urged by the Organization the duties incident to the operation of the switch are in themselves sufficient to bring into play the appropriate Schedule article with reference to added duties.

The above Award held extra or added compensation due for such period of time as said added duties were performed, to wit: on or about May 26th 1949 to on or about April 30th 1950.

Referee Angus Munro who sat with the Division as a member thereof when Award No. 5298 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of December, 1951.

[1259]