

Award No. 5694

Docket No. TE-5724

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Livingston Smith, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
ILLINOIS CENTRAL RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Illinois Central Railroad that:

1. the Carrier violated and continues to violate the provisions of the Agreement between the parties when and because it permitted or required and continues to permit or require employes who are not only outside the Agreement, but employes of another Carrier to perform certain duties at Manson, Iowa, which work is covered by the Agreement, at a time when the agent is not on duty but is available, and;

2. by reason of this violative action the Carrier shall now compensate O. F. Spangler an amount equal to one "call" for each violation commencing thirty days prior to first filing and continuing until said violation is corrected.

EMPLOYES' STATEMENT OF FACTS: Manson, Iowa, is a city served by two railroads, the Illinois Central and the Chicago, Rock Island and Pacific. The tracks of the two lines intersect at Manson.

Prior to the year 1932, the Illinois Central station force at Manson comprised an Agent at the Station, together with two clerks; three round-the-clock operator-levermen at the Interlocking tower located about one block from the station building. On or about February 23, 1932, the first operator-leverman position was abolished and the two remaining operator-levermen were moved to the station. This resulted in round-the-clock service at the station. When Rock Island trains were to cross the Illinois Central, the agent-operator-leverman or the operator-leverman, depending upon the time of day, was required to go to the Interlocking tower and operate the levers controlling the derail and signals, to permit the Rock Island trains to cross over.

During August 1932, the two operator-leverman positions were abolished, making the agent-operator-leverman the sole employe under the Agreement at the station. The agent-operator-leverman was paid overtime when required to remain on duty after regular hours, to cross the Rock Island trains over. When necessary to report for this work at times not continuous with his regular assignment, he was compensated under the "call" rule.

In November, 1947, the manually-operated Interlocking Plant was dismantled and an electrically controlled interlocking device was installed in the station, controlling signals governing the crossing. The agent-operator-

of the signals and switches at the crossing at Ponca City when the Rock Island engines and cars were to cross the Santa Fe tracks was, in fact, no more a 'towerman' or 'leverman' than the engineer would have been had the power been invoked by the engineer when he opened the throttle or he pulled a lever to move the engine to a point where contact between the flange or some other part of the wheel and the rail would complete the circuit and bring about the automatic change of signals and switches."

As further evidence that the work in question is not exclusive to the Telegraphers' Agreement, the following Findings are quoted from First Division Award No. 9228:

"On January 1, 1932 a cabin interlocker was put into operation. A cabin interlocker mechanically dispenses with the service of a leverman. In 1940 claim was made by Conductor Ellsworth on account doing telegrapher's work and later on the ground that if not telegrapher's work that it did not come under the scope of the Conductors' Agreement.

"When the mechanical device of a cabin interlocker made a leverman unnecessary and he was dispensed with, there was no leverman subject to the telegraphers' contract. The mechanical device introduced a conditional method of train crews throwing switches enroute in connection with the movements of their own trains which was always part of their duties."

Inasmuch as the Telegraphers have no monopoly rights to the operation of push buttons controlling signals, governing train movements, the work in question could not conceivably be considered as coming within the scope of the Telegraphers' Agreement. If, however, the work had been included in the scope of the agreement, the claim would not be proper because this is Rock Island work governing the movement of Rock Island trains on its property over which this Carrier has no control. Your Board, assisted by Referee Robert O. Boyd, when Award No. 5246 was rendered, held that,

"... the Scope Rule of a collective bargaining agreement covers only the work thereunder which is or may be undertaken by the Carrier in connection with its operation of its railroad. That is, the Scope Rule of an agreement on one property does not cover like work on another property not under the control of the specific Carrier."

There is not the slightest shadow of merit to this claim. The signatory party for the petitioner personally signed the agreement for the arbitrary allowance to the claimant under the provisions of Rule 15(a) and paragraph (d) of the same rule permits the identical duties to be discontinued or assigned to employees not covered by the existing agreement. The claim should be summarily denied.

All data submitted in support of the Carrier's position have been presented to the petitioner in correspondence or conference and are made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The physical or geographical features of this claim have to do with the point at which the tracks of the Illinois Central intersect those of the Chicago, Rock Island and Pacific Lines at Manson, Iowa.

The above named Carriers have operated and maintained an interlocking system at this point under a "joint usage" contract originally entered into in 1900 and amended in 1932.

At its inception the interlocking system was operated by levermen. However, subsequent to 1932 the controls were attended by an agent-operator who left the station and proceeded to the interlocking equipment tower when the movement of trains across intersecting tracks necessitated the operation of levers. In 1947 a control system was installed in the station which enabled the agent-operator at Manson to operate the interlocking system from inside the station. In 1949 auxiliary equipment was installed at the crossing which enabled train crews of the other Carrier to set signals which automatically lined switches to permit movement of their train.

The parties are in agreement that from the time the interlocking equipment was first installed to the date Rock Island train crews commenced operation of the auxiliary controls, the work had been exclusively performed by operator-levermen or by agent-operators irrespective of the time of day or ownership of equipment necessitating the use of the interlocking system.

Agent-operators admittedly came within the purview of the Telegraphers' Agreement with the Illinois Central.

The Scope (Rule 1) of the controlling Agreement clearly reserves to the class of employees named therein the work appertaining thereto.

Awards of this Division have uniformly likewise held that work of a class covered by the Agreement belong exclusively to employees covered thereby.

Tradition, custom and practice have placed work of the nature here involved within the classification of claimants.

The record is clear that at all times prior to the installation of the auxiliary control system at the crossing itself, employees classified as levermen or agent-operators performed all of the work in connection with the interlocking facility.

If the basis of this claim covered the performance of the work in question by employees of the Respondent not covered by the Agreement, the proper disposition of the dispute would not present the question here involved. However, there are here present several facts that upon examination, change materially the circumstances which would justify an affirmative award.

There has existed since 1900 an Agreement between the Respondent and the Chicago, Rock Island and Pacific Railway which provides for the joint usage of the crossing at Manson.

This dispute concerns operation of the lever or button controlling use of the auxiliary unit, at the crossing, when such operation is performed by train crews of the "foreign" Carrier in connection with the movement of "foreign equipment."

It is not charged nor is there evidence of record that complained of acts by crew of the "foreign Carrier" facilitate the operations of the Respondent, or that any benefit, material or otherwise, accrues to the Respondent. To the contrary, the record discloses that the switch controls at the crossing when operated by, and in the manner complained of, automatically reverse their positions to a position which allows this Carrier's operations to function without further action or attention from the "foreign crews."

The Agreement before this Division can not be properly construed as covering work performed under order of and for the benefit of parties not a party thereto. The Agreement covers Respondent's work for Respondent's benefit.

The work complained of was not covered by the Scope Rule of the Agreement in that the same was not assigned by or performed for and no benefit accrued to the Respondent.

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

The cited Rules have not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Signed) A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of March, 1952.