

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Baltimore and Ohio Railroad, that

(1) The Carrier violated the provisions of the agreement between the parties when, between the dates of January 3 and 9, 1951, inclusive it required or permitted employes not covered by the scope of the agreement to copy train orders at Chesapeake Junction; and

(2) In consequence thereof, the Carrier shall be required to pay to the senior idle employe on the Baltimore Division seniority district, a day's pay at the former rate of the telegraph service position at Chesapeake Junction, with subsequent general wage increases, on each eight hour tour of duty on the dates that the violations took place.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of July 1, 1928 (reprinted July 1, 1948) is in evidence, hereinafter referred to as the Telegraphers' Agreement.

Chesapeake Junction is a point located on the Alexandria Sub-division of the Baltimore Division. At one time there was a telegraph office at this location with around-the-clock service on three separate shifts to operate the movements of trains to and from the single track at this point and to perform all the telegraphic communication work arising at that station. On or about May 12, 1943 the telegraph positions at Chesapeake Junction were declared abolished by the Carrier and the controls of the switches and signals for the movement of trains to and from the single track at Chesapeake Junction were transferred to the telegraph service employes at "JD" Signal Station at Alexandria Junction, 3.8 miles distant, to handle by remote control operation.

On January 3, 1951, a water line pipe beneath the tracks burst at Defense Highway Crossing, Bladensburg, Maryland which required trains to proceed at a slow speed at this point. This required that a special train order be issued to each and every train passing over the track at the point where the water line had burst. The repair work which started on January 3 was not completed until January 9, 1951 and train orders were required for all trains operating over this point until the repairs were completed.

Instead of reopening Chesapeake Junction between the dates involved in this dispute, to handle the train orders copied at this point for all eastbound trains, the Carrier required or permitted the train crews, employes on all eastbound trains, to copy their own train orders at Chesapeake Junction contrary to the rules of the agreement extant between the parties.

The train orders involved in this dispute were the same in each case and were sent individually to and handled by each train moving eastbound at Chesapeake Junction. This meant that the conductor and/or a member of the train crew of each train moving eastbound at Chesapeake Junction day or night, received and copied the following Form 31 train order:

"Train Order No. 1009—Baltimore, January 3, 1951.

| | |
|----------------------------------------|------------------------|
| To C & E—Westward Trains | AT—Alexandria Junction |
| to Alexa. Sub. | |
| Divn. and | |
| Eastward Trains at Chesapeake Junction | |
| via Alexandria Jct. | |

Do not exceed 25 twenty-five miles per hour between Defense Highway Crossing Bladensburg and East Leg of Wye Hyattsville account repairing bursted water line under track.

L.A.G."

The above train order and others similar to it concerning this movement of trains came from the train dispatcher at Baltimore, who transmitted the orders to the telegrapher on duty at Alexandria Junction who was required by the Carrier to relay each order by telephone to Chesapeake Junction 3.8 miles distant for a conductor and/or train service employes on each train moving eastbound to copy at that point governing the movement of the train.

The Organization claimed that it was a violation of the rules for a train crew employe to copy train orders at Chesapeake Junction, and that the Carrier had in fact set up a temporary communications office at this point for the handling of train orders and that telegraph service employes were being deprived of work on each of these days around-the-clock. The Carrier denied the claim.

POSITION OF EMPLOYES: The following exchange of correspondence will serve to explain this case and the handling on the property:

January 9, 1951, Local Chairman Frazier to Superintendent Murphey:

"It has been brought to my attention that train orders have been telephoned daily to trains at Chesapeake Jct., account of slow orders between that point and Alexandria Jct.

This is a violation of the Telegraphers' Agreement and will claim one day's pay for the operator available and not used. It is my understanding that this violation has occurred on each trick for over a week."

Superintendent Murphey to Local Chairman Frazier January 12, 1951:

"Refer to your letter of January 9th presenting claim in favor of operators available and not used at Chesapeake Jct. account slow orders between that point and Alexandria Jct. covered by telephone daily to trains, etc.

This order was put out at Alexandria Jct. for eastward trains from Chesapeake Jct. in an emergency to avoid placing a 31 order at Anacostia, which would have required eastward trains to stop at

Junction and Chesapeake Junction. An operator's position had been established at Chesapeake Junction during period of the construction of the double track. Concurrently with the completion of the construction and the establishment of the new interlocking, the position was abolished. In 1943 the Committee protested that the enlargement of the duties of the operators at Alexandria Junction Tower justified an upward adjustment in their rate. They did not argue that the Carrier could not properly abolish the operator's position at Chesapeake Junction or make any request that the position be restored. At that time the parties were agreed that "When this machine was placed in service, the Block Office at Chesapeake Jct. was closed." The Committee recognized that the need for such a position disappeared with the completion of the construction work.

A settlement was reached following the Committee's request for upward adjustment in the operator's rate. The Carrier has reviewed the settlement in its statement of facts. The settlement as made between the parties compensated the operator fairly for the increase in the territory under his jurisdiction. The Committee in accepting the settlement approved the extension of the interlocking territory to Chesapeake Junction. Accordingly, they abandoned any claim they may have had, and the Carrier submits they had no valid claim, arising from the abolishment of the operator's position at Chesapeake Junction.

This Division has upheld on many occasions the validity of mutually agreed upon settlements between the parties to a dispute. The Carrier has submitted evidence of such a settlement; this Division must necessarily pass upon that settlement in rendering judgment in this dispute.

III—The rule specifically excludes this kind of situation.

When this case was discussed in conference on the property, the Telegraphers' Committee argued but one point. They contended the Carrier was guilty of a violation of Article 35 of the Telegraphers' Agreement. To cite the Committee's contention in a Memorandum of Conference signed at Baltimore on February 19, 1951, between Superintendent W. M. Murphey and Local Chairman Frazier:

"The telephoning of orders to Chesapeake Jct. is a violation of Article 35 of the Telegraphers' Agreement."

Article 35 of the current Telegraphers' Agreement, Rules effective July 1, 1928, as reprinted July 1, 1948, reads in full as follows:

"It is not the disposition of the Railroad to displace operators by having trainmen or other employes operate the telephone for the purpose of blocking trains, handling train orders or messages, except in bona fide case of emergency. This does not apply to train crews using the telephone at the ends of passing sidings or spur tracks in communicating with the operator."

The Carrier emphasizes the pertinent exception in the rule. The parties are agreed that the settlement of policy stipulated in Sentence 1 of the Rule will have no application whatever under circumstances where train crews use the telephone at the ends of passing sidings or spur tracks, i. e., at intermediate points between stations, "in communicating with the operator."

The factual record establishes that at the end of the double track at Chesapeake Junction eastbound trains on the Branch were halted and train crews received an order from the Tower. It was at all times a communication handled within the designated boundaries of the Alexandria Junction Tower interlocking and with the operator having jurisdiction thereof.

It is the position of this Carrier, supported in the rule, and confirmed in past practice over the years, that any such situation as this fell sharply

within the stipulated exception to the general rule. Certainly it was never the intent of Article 35 to prohibit telephone conversation between trainmen and operators within the interlocking limits of the Tower. Since the territory controlled by Alexandria Junction Tower properly includes the end of double track east of Chesapeake Junction, communication by telephone, or by any other means, between trainmen in this area and the tower man at the Junction is permissible under the rule. Certainly no operator was displaced as a result of anything done here.

For these reasons, the Carrier submits the Employees cannot support a claim under the application of any rule to be found in the Working Contract.

Based on the above, the Carrier respectfully petitions this Division to find this claim, Parts (1) and (2), as being wholly without merit and to deny them accordingly.

All data submitted in support of the Carrier's position has been presented to, or is known by, the other party to this dispute.

(Exhibit not reproduced.)

OPINION OF BOARD: The essential, relevant facts in the instant dispute are not a matter of controversy between the Parties. (1) On the Carrier's Alexandria Branch is Chesapeake Junction, a point about four miles from Alexandria Junction, which latter connects the Carrier's Alexandria and Washington branches. (2) At Chesapeake Junction there are various signals and devices directing the movement of trains to and from that point; and these are remote-controlled by operators at Alexandria Junction. (3) Before May 13, 1943, and particularly during the Carrier's construction of a passing double track in the early part of the war, telegraph operators had been employed to help control traffic at Chesapeake Junction. But as of that date these positions were abolished, and the above mentioned remote-control system was installed at Alexandria Junction. The positions at the latter office were, through negotiation between the Parties given higher rates of pay because of the increased amount of duty and responsibility. (4) On January 3, 1951, a water pipe line burst at Defense Highway Crossing on the Alexandria Branch. This made it necessary for trains to proceed at greatly reduced speed east of Chesapeake Junction while repairs were being made. The Carrier required eastbound trains to stop at this Junction. Train crew members there copied down orders received by telephone from the operator at Alexandria Junction. In other words, the remote-control mechanisms at Chesapeake Junction were adequate for handling the conditions involved in normal train movements, but not for the special conditions with which this case is concerned. (5) Repairs were completed by January 9, 1951, and normal train movements were thereafter resumed.

The Organization contends that for the January 3-9 period the Carrier should have re-established the train order office at Chesapeake Junction, so that the train orders could have been transmitted manually to train crew members by Organization members. The Carrier's decision to operate as above described is alleged to have violated the scope rule of the agreement as well as Article 35 (both are quoted in full in the Organization's presentation, above). It is the Organization's contention that (1) the Carrier gave to non-Organization employees work which under the Scope Rule could have properly been assigned only to positions under the Organization's recognized jurisdiction; and (2) under Article 35 the Carrier agreed not to displace operators by having non-Organization employees use the telephone for handling train orders, except in the three circumstances mentioned in that rule, none of which applies here.

The Carrier contends that no provision of the Agreement was violated. It argues that (1) since train movements east of Chesapeake Junction were directed by remote control from Alexandria Junction and the action complained of took place within the interlocking limits of the latter's

control, it was entirely proper for the operator at Alexandria Junction to talk directly with the trainmen (i. e., the latter were "handed" their orders through modern technological devices); (2) the previously mentioned settlement of higher rates for Alexandria Junction operators was designed to cover and avoid any such claim as the instant one; (3) in any case under Rule 35 the exceptions of "emergency" and "passing sidings" existed in this case, so that the rule's prohibition does not apply; and (4) even if these exceptions are not deemed applicable here, the rule forbids only "displacement" of operators, and there was no such displacement here.

In respect to the first main issue—the applicability of the Scope Rule of the Agreement—there can be little doubt, in the light of numerous previous awards by this Board, that the manual handing of train orders to train crews comes within the proper general meaning of that Rule. In the absence of some other rule to the contrary, more specifically applicable to the circumstances of this case, we would be disposed to rule at once in favor of the Organization. But there is such a specific rule—Rule 35. Therefore, we must consider its meaning in terms of this case's facts.

In Rule 35 the Carrier agrees not to displace operators by letting non-operators use the telephone to handle train orders except in bona fide cases of emergency or where the non-operators use the telephone at the ends of passing sidings or spur tracks in communicating with operators. To resolve this case, then, we must decide whether there was a bona fide emergency and whether passing sidings or spur tracks were involved; if we find none of these, we must then decide whether the Carrier's action displaced any operators.

We do not think that the record establishes the existence of an emergency, in the usual meaning of that term for railroad operation. We think that the Organization succeeded in showing that the Carrier had sufficient time to plan for the use of one or more operators at Chesapeake Junction if it had chosen to do so. In our judgment also the record indicates that the track involved was not passing sidings or spurs in the usage normally attached to those terms.

We are then left with the question, Did the Carrier's action displace operators? What meaning should properly be attached to "displace" in the light of this case's circumstances? If "displace" here means that, when or because the trainmen received and copied their orders over the telephone from an operator four miles away, one or more operators lost their jobs or their positions were abolished, it is obvious that nothing of the sort occurred. The operator positions at Chesapeake Junction had disappeared almost eight years before. They were displaced by technological improvements and not by what the Carrier did from January 3 to January 9, 1951. On the other hand, if we define "displacement" to mean that the handling of train orders under the Carrier's decision made it possible to avoid the temporary employment of one or more operators at Chesapeake Junction for the period in question, we cannot but conclude that there was such displacement.

We think we must hold here to the second of the above-stated definitions. We believe that the general intent of the Agreement was not only to protect employees' rights in existing positions but also to guard against giving their recognized duties to other employees where new work, temporary or permanent, arises. In the instant case, operators were deprived of work just as surely as if the manual transmission of orders had long existed at Chesapeake Junction and the Carrier had suddenly given such duties over to trainmen, thereby abolishing operators' positions. Thus, we believe that the Carrier was required by the Agreement to use operators at Chesapeake Junction for the period January 3 to January 9, 1951.

This is not to say, of course, that under other circumstances we should not be inclined to adopt the first of the definitions outlined above and come

to what might seem an opposite conclusion. Each case must turn on its own facts and merits.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1952.