

Award No. 6172

Docket No. TE-6120

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Houston Belt and Terminal Railway Company, that:

(a) The carrier violated and continues to violate the terms of the Telegraphers' Agreement, dated September 1, 1946, and the Memorandum of Agreement, dated August 16, 1949, when employees at Congress Avenue, not covered by the agreement, are required or permitted to receive by the use of the telephone train orders and clearance cards governing the movements of trains, and deliver such orders and/or cards to employees in train service.

(b) In consequence of such violative acts the carrier be required to compensate the senior extra employee not working for eight hours each shift on which the violation occurred. If no extra employee is available, then the senior idle employee will be paid eight hours for each shift on which the violation occurred.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of September 1, 1946 is in evidence, hereinafter referred to as the Telegraphers' Agreement, copies thereof are on file with the National Railroad Adjustment Board. Also, in effect and on file with the Board is a Memorandum of Agreement dated August 16, 1949.

On November 15, 1948 the International-Great Northern Railroad Company and the Houston Belt and Terminal Railway Company became parties to what is termed "The 1948 HB&T Operating Agreement". This agreement covered the coordination of certain facilities and operations of the two carriers in the Houston area.

Prior to the coordination there were in effect on the International-Great Northern three positions designated as "Telegrapher" at Houston Yard. The International-Great Northern Railroad is included in and is a part of the

service) at Congress Avenue merely for the purpose of handing the clearances to the crews for whom they may be intended.

The agreement entered into between the parties (Exhibit "A") with the full knowledge and understanding of all concerned that the telegraphic work then being performed at "CB" office, Congress Avenue, would thereafter be performed at Tower 85. We know of nothing in the Telegraphers' Agreement on this property that prohibits operators telephoning information they have received, such as here involved, to the point in the same terminal where the information will be handed to the parties for whom intended. And, it is not only considered pertinent but significant as well to note that in the years gone by such handling has not been considered by either party as a violation of the agreement. This fact is in itself persuasive and influencing argument in support of the Carrier's position. The Employees' silence throughout the years in this respect is indicative of their acquiescence in the practice and manner of handling the clearances here involved.

In connection with the several instances cited in the Local Chairman's letter to the General Manager, February 15, 1952, *supra*, where the yardmaster at Congress Avenue received clearances direct from the dispatcher at Galveston, it must be said in all honesty that this improper practice was indulged in without the knowledge or consent of the Carrier's management; and when called to attention of the Management, the practice was immediately stopped.

In the light of the foregoing it is the position of Carrier that the contention and claim of the Organization is entirely lacking of support under provisions of the working agreement, and in addition thereto is without any semblance of justification or merit, and should accordingly be denied.

(Exhibits not reproduced.)

OPINION OF THE BOARD: This claim arose out of the following factual situation. Prior to June 1, 1950 telegraphers were working at "CB" Congress Avenue Yard. They received, copied and delivered clearances to train and engine service crews. These train and engine service crews were operating engines or trains from this point in yard switching. The switching being done, for which the clearance was needed, was all within the Houston Terminal. The clearances were received by telegraphers from the GH&H dispatcher located at Galveston. On June 1, 1950 the telegraphers at "CB" Congress Avenue Yard were transferred to Tower 85. This transfer was made pursuant to an agreement of the parties dated August 16, 1949, part of which is hereinafter set out. After June 1, 1950 train service crews and other employees of the Carrier working at the "CB" Congress Avenue Yard, none of whom were under the Telegraphers' Agreement, called the telegraphers, then located at Tower 85, and obtained these clearance orders from them, the telegraphers having obtained them from the GH&H dispatcher at Galveston. Tower 85 is located about three miles from "CB" Congress Avenue Yard but both places are within the Houston Terminal.

Scope Rule 1 (b) of the parties' Agreement provides:

"Positions or work referred to in this agreement belong to the employees covered thereby and no work or position shall be removed from this agreement except by mutual agreement."

It was agreed by the parties in the agreement of August 16, 1949, that:

"As of the date the consolidation is made effective the positions in the I-GN "CB" Congress Avenue Yard will be transferred to Tower 85 and will be under the jurisdiction of the HB&T, and the working conditions of the positions so transferred will be governed by the provisions of the HB&T Telegraphers' Agreement."

We find, under comparable situations, that this Division has held that such use of the telephone does not encroach upon the jurisdiction of the Telegraphers. See Awards 700, 1396 and 5023.

But there is another reason why the change is not in violation of the parties' Agreement. By their Agreement of August 16, 1949 the parties agreed Carrier could transfer the positions at the "CB" Congress Avenue Yard to Tower 85, which it did. Thereafter, by agreement, there were no telegraphers' positions at "CB" Congress Avenue Yard. Under such a situation what this Division said in its award 4516 is applicable, that is, the use of the telephone to call an operator at another point was permissible and not in violation of the Telegraphers' jurisdiction.

Admittedly the yardmasters at Congress Avenue Yard have at various times received clearances direct from the GH&H dispatcher at Galveston. That was improper and Carrier acknowledges it was. For every occasion, since June 1, 1950, when a yardmaster, or anyone else not under the Telegraphers' Agreement, has called the GH&H dispatcher at Galveston from the Congress Avenue Yard and obtained clearance for yard switching we find the claim to be meritorious but not when they called an operator at Tower 85 for that purpose.

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 Carrier violated the Agreement.

AWARD

Claim sustained but only to the extent as set out in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD:
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of April, 1953.