

Award No. 6290

Docket No. TE-6276

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CENTRAL RAILROAD COMPANY OF PENNSYLVANIA
AND/OR ITS SUCCESSOR, THE CENTRAL RAILROAD
COMPANY OF NEW JERSEY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Central Railroad Company of New Jersey, that

(1) The Carrier violated the terms of the effective agreement between the parties when on September 1, 1951, it declared abolished two assignments of ticket agent-operators at Scranton, Pennsylvania, 6:00 A.M. to 2:00 P.M., and 4:40 P.M. to 12:40 A.M., without in fact discontinuing the work properly belonging to and performed by the two ticket agent-operators at that station, and transferred the work of those positions and assigned the performance of same to employees not covered by the terms of the agreement; and

(2) The work formerly performed by the two ticket agent-operators at Scranton, including the regular assigned rest day relief employees, shall be restored to the Telegraphers' Agreement and performed only by employees entitled to such work under the agreement; and

(3) The employees who were improperly removed from their assignments at Scranton, as well as all other employees resultantly displaced from their assignments, shall be restored thereto and be compensated in full in accordance with the provisions of Article 22 for each day beginning with the date their assignments were improperly declared abolished, or the date they were displaced, and continuing each day thereafter until they are restored to their respective assignments; and

(4) All other employees who were deprived of work as a result of this violative act shall be paid for all wages lost.

EMPLOYEES' STATEMENT OF CLAIM: An agreement by and between the parties effective June 15, 1944, as amended September 1, 1949, is in evidence hereinafter referred to as the Telegraphers' Agreement.

Scranton, Pennsylvania, is located at the extreme west end of the railroad, in the State of Pennsylvania. All trains terminate at this point. Trains operate over single track in both directions between Scranton and Taylor, a distance of 3.42 miles.

yardmasters, and/or other employees; nor prohibition of train yard men obtaining permission from a telegrapher by telephone to use a designated track, or report when clear of same. See Awards 652 and 653."

There is no telephonic communication by the train crew with the dispatcher either directly or through an operator. It is no more than is done by the train crew in asking permission by telephone of the operator in control of any Secondary Track for permission to use that track or to report clear of the Secondary Track.

The Carrier affirmatively states all data contained herein has been presented to the employees representative.

(Exhibits not reproduced).

OPINION OF BOARD: Carrier, by bulletin on August 24, 1951, notified the employees, effective September 1, 1951, of the establishment of a secondary track of no assigned direction between the first crossover west of Taylor Yard Office and Scranton Station, said track to be controlled by operators at Taylor Yard Office. In addition the bulletin stated crews will obtain permission before using the secondary track and report clear after using the track.

The bulletin further provided for abolishment of two (2) Agent-Telegrapher positions at Scranton assigned as "JO", Scranton, Penna.

By the Carrier abolishing the two positions as Agent-Telegrapher, the Organization contends the Carrier has violated the Scope Rule of the current agreement between the parties, in that since the abolishment of said positions, the work remains and is being performed by employees of other crafts, as well as a part of the duties have been assigned to other employees improperly. For such violation by the Carrier, the Organization requests the Claimants be restored to their former positions and to be compensated for all loss of wages and expenses if any, as provided by Article 22 of the agreement, from the date of displacement of the regularly assigned positions until restoration to the respective assignments. Item #4 of the claim also requests "that all other employees" deprived of work be compensated for wages lost.

It is the opinion of this Board that the only employees to be considered as proper claimants are those named in Employees' ex parte submission. "All other employees", is non-descriptive, too vague, indefinite and uncertain and such claims should be dismissed for reasons as stated.

Carrier denies a violation of the Agreement, by its action in abolishing the positions and contends that the change brought about, as set out in its bulletin designating the establishment of a secondary track, that such track was thereafter under control of the operator at Taylor Yard Office and that such operator was alone responsible to record movements on the secondary track.

Carrier further contends that by the change in operation, there was no further need for the two positions of ticket agent-operator who had previously reported all train movements to the Train Dispatcher from "JO", since there was no longer a need for train orders or clearance cards for movement over the newly designated secondary track. Carrier, in its Operating Rules effective October 15, 1946, has defined secondary track as follows:

"A track designated by time table upon which trains and engines may be operated without time table authority, train orders or block signals."

The Employees rely on the Scope Rule, which provides for positions of Ticket Agents, Agent Operators, Agent Telegraphers, Freight Agents (except Supervisory) and Block Operators, in addition to other positions listed.

A part of the work performed by the Employees was selling tickets. Immediately following the abolishment of the positions involved herein, the Carrier saw fit to move the supply of tickets to the freight house, and the freight agent was required to take over this work. It is immaterial as to the amount or number of tickets sold by the former employees; if the work remained after the Agent-Telegrapher positions were abolished, Carrier violated the agreement by assigning the work to the freight agent since the Scope Rule specifically provides for the handling of tickets by Ticket Agents, Assistant Ticket Agents, Agent-Telegrapher-Operator and Agent-Telegraphers. We are of the opinion the sale of tickets as a part of the Telegraphers' duties and removed to the duties of the Freight Agent constitutes a violation by the Carrier of Article 22 of the agreement as there is nothing in the agreement which allows Freight Agents to perform this work.

The record further shows that when Carrier established the secondary track and removed the operation from the train dispatcher, it became the duty of operators at Taylor Yard Office to supervise the operation and movement of trains over the secondary track. By virtue of Carrier's bulletin, effective September 1, 1951, paragraph two (2) provides as follows:

"Crews will obtain permission from the Operators at Taylor Yard Office before using the secondary track and will report clear after leaving the track."

What does Carrier mean by its reference to Crews? It can mean only one thing, a reference to train crews who are operating over the secondary track. The work performed by train crews in reporting on entering and leaving the secondary track to the operator at Taylor Yard Office is work formerly performed by the Claimants and now performed by train crews and occasionally by section men. This consists of duties performed prior to the change and was work performed by block operators, strictly a position provided by the Telegraphers' Agreement and was assigned to train crews and section men, as evidenced in the record, an Extract from Station and Block Record, furnished by the Employees in their ex parte submission. Award 4516. Such assignment of work is a violation by the Carrier of Article 43 of the Agreement, as such work performed is clearly within the positions set out in the Scope Rule and exclusively belonging to the Telegraphers' Organization. The necessity for train crews to obtain permission to operate over the secondary track by train crews remains the same, except that under the change they now receive necessary permission from the operator at Taylor Yard Office, where prior to the change such permission came by orders from the dispatcher through the operators whose positions have been abolished. Such action by the Carrier is clearly in violation of the existing agreement. Nor does the Agreement permit the Carrier to assign work to employees, who are not classified as set out in the Scope Rule, as in the case before us, the requirement of train crews to perform work of telegraphers but such crews being of another craft. Awards 4249, 4516, 5253, 1501, 3881 and recently 6167, also U. S. vs. Baltimore & Ohio R. R.—133 Fed. 2nd 831.

The Organization cites us Award 5146, this Division, in support of its contentions. While the record in that case indicates some similarity to the facts before us, the Award cannot be used as a precedent for the reason said Award is neither a sustaining or denial award as is described in the Findings, and was dismissed at the request of the complainant party.

This Board does not have the authority to require the Carrier to restore the abolished positions in addition to a claim for compensation due to loss of positions, nor can we direct the Carrier in what manner the award shall be complied with. Award 5253.

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 Carrier has violated the Agreement, as in accordance with the Opinion of the Board.

AWARD

1—Claims sustained as to all named Claimants in accordance with the Opinion and Findings.

2—Claims dismissed as to "all other" and unnamed employees.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1953.

DISSENTING OPINION TO AWARD 6290—DOCKET TE-6276

Here the majority have compounded error upon error by creating **obiter dictum** and then using it to sustain this claim. The Organization did not argue that ticket selling could not be reassigned from one employee to another employee within the scope of the same Agreement. On the contrary, we have held many times that the right to sell tickets is not **exclusively** given to any craft. Awards 4446, 5281 and 6041.

In previous Awards we have recited the elementary principle that except as it has restricted itself by the Collective Bargaining Agreement, or has been limited by the operation of law, the assignment of work necessary for its operations lies within the Carrier's discretion. Awards 5331, 5897 and 6001.

In this Award the majority places themselves in the anomalous position of stating:

"constitutes a violation * * * of the Agreement as there is nothing in the Agreement which allows Freight Agents to perform this work."

The correct statement and one in keeping with our previous Awards is:

"does not constitute a violation * * * of the Agreement as there is nothing in the Agreement which **prevents Freight Agents** performing the work."

This Award is devoid of reason or logic in holding that train crews violate Train Order Rule No. 43 when they simply report by the telephone to

the operator at Taylor Yard Office. No train orders were handled, or needed, and certainly the Train Order Rule applies only to the standardized train orders. We have held that where a rule enumerates things to be affected by its provisions, there is an implied exclusion of others. Awards 2009, 3825, 4439, 4962 and 5314. The restrictions imposed by the train order rule are specifically made applicable only "to the handling of train orders." Awards 1145, 1396, 6124.

A Carrier has the right and responsibility to make and to enforce its operating rules. Thus the Carrier was within its rights in designating this as a secondary track operation and removing the control thereof from the train dispatchers, and it logically follows that Rule 43, which deals only with train orders, could not have been violated.

The Award by the majority here simply expands and/or revises the Rules negotiated by the parties and reads into them an entirely different meaning and further attempts to restrict the Carrier's right to control its operation.

This claim was completely without merit and it should have been denied.

For these reasons we dissent.

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ E. T. Horsley