

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, 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 & Ohio Railroad, that:

(1) The Carrier violates and continues to violate the provisions of the agreement between the parties, when it requires or permits employes holding no rights under the scope of said agreement at Ellwood City, Pennsylvania to copy line ups, clearance orders, block trains, perform "OS" work and other communications of record over the telephone.

(2) If the Carrier elects to continue the performance of this communications work at Ellwood City, it shall be performed by and be assigned to employes coming under the agreement in accordance with the rules of said agreement; and,

(3) For each day, on each eight hour shift that the violations take place, commencing December 17, 1949 and continuing until the violations are corrected, the carrier shall be required to pay to the senior idle employe under the agreement, on the seniority district, eight hours' pay at the established rate for such work.

EMPLOYES' 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.

Ellwood City, Pennsylvania is a station located on the Pittsburgh Division double track line of railroad. The station is in charge of a supervisory agent which is excepted from the coverage of any agreement with any organization. There are no employes under the agreement assigned at Ellwood City at this time; however, there are several employes of another craft at this station.

Ellwood City is the headquarters station for two section gangs, one signal maintainer, and one car inspector. All of these four classes of employes operate track motor cars.

Prior to the year 1932 there were two telegraph service positions under the agreement at Ellwood City, classified as telegrapher-clerks. The employes filling these positions handled the communications work and other incidental duties including certain clerical work, at Ellwood City.

rule now contained in the Telegraphers' Agreement in effect on this property. The Carrier submits that insofar as these two items are concerned the Employees' request in these matters can amount to no more than a petition that this Division order the Carrier to establish a new operator position at Ellwood City, Pa. The Carrier submits that there is no rule contained in the Telegraphers' Working Agreement which would in any way specify the number of operator positions at any yard or terminal on the property of this Carrier, and this being a fact, the Carrier submits that the Division has no authority to go beyond the scope of the rules contained in the Working Agreement and accede to the Employees' request.

Based, therefore, on the factual record is this dispute, the Carrier submits that the request of the Employees here is totally without merit and accordingly should be declined.

The Carrier submits that all data in support of the Carrier's position in this case has been presented to, or is known by, the other party in this dispute.

OPINION OF BOARD: The Organization contends as set out in the foregoing claim, that Carrier violates the Agreement between the parties by permitting or requiring employees not covered by the Agreement, to perform duties rightfully belonging to Telegraphers, as provided by the Agreement. It is further contended that if such violations by Carrier continue that such duties requiring communications work be assigned to employees of the Telegraphers' craft, as required by the Agreement. The Organization claims that for each day, each eight hour shift, that all such violations as alleged, commencing December 17, 1949 and continuing until the violations are corrected, the Carrier be required to pay the senior idle employee on the seniority district eight hours pay at the established rate for such work. Such practices by Carrier are alleged to be in violation of the Agreement, Article 1, Section (a).

To these contentions and allegations Carrier denies any violation of the Agreement, and in support of its position relies on the provision as set out in Article 35 of the Agreement.

The claim before us originates at Ellwood City, on the Pittsburgh Division of Carrier's operations; it is located between "UN Tower" on the west and "Eidenau" on the east, and is composed of a supervisory agent not covered by the Agreement, a switching crew, maintenance gangs, car inspector and signalman. It will be noted that with the exception of the years 1931 and 1932 no employees of the Telegraphers' Organization have held positions at Ellwood City since the first Agreement was negotiated in 1910, and no such positions are included in any of the Agreements mentioned. During the years 1931 and 1932 Carrier established an operator-clerk position at Ellwood City station for handling of ticket sales and other clerical duties, which position was abolished in June 1932. Carrier contends, and it is not denied, that a train order board was never in operation at Ellwood City.

The Employees state that the operations carried on at this point require the employees outside the Agreement to obtain permission to use the main track, switching orders and telephone, for necessary information between the employees and operators at a distant station. That all of such work performed at Ellwood City is reserved to the Organization and is covered by the scope, classification, seniority and other rules of the Agreement. Claim is predicated upon the use of the telephone by the employees to obtain orders for clearing of trains, securing Form A permission to cross-over, reporting clear, and securing track lineups.

After reviewing the record before us there appears to be little dispute as to the actual facts of the operations of Carrier complained about by the Organization. The scope rule before us is general in character, and does not define or spell out the work of Telegraphers. Carrier does not deny the

particular allegations made, except that it vigorously denies that any communications of record were handled by train or track crews, and as its defense to the claim relies on the provisions of Rule 35 of the Agreement.

At Ellwood City the National Tube Company and its subsidiaries, where the switching facilities and other operations are handled by Carrier, and its plant is located on trackage provided by Carrier for the handling of switching operations at the plant. It is at this point that the train crews are required to telephone to "UN Tower" or "Eidenau" for permission to enter or leave the main track, or where a cross-over is necessary. Such permission is required by specific instructions by Carrier's Operating Rules 151, 513, and 514 of the Operating Department. All such permission is secured from the operators at "UN Tower" and "Eidenau", verbally by telephone.

It has been uniformly held by this Division that in applying the scope rule the handling of train orders by train crews constitutes a violation of the Telegraphers' Agreement, in the absence of any other rule to the contrary. But we have in this case Rule 35, as relied upon by Carrier, and must consider its meaning as it may be applicable. As we said in Award 5901—

"To resolve this case we must decide whether there was a bona fide emergency and whether passing sidings or spur tracks were involved."

Under the record as presented, would the operations at the National Tube Company be considered as passing sidings or spur tracks, as operations coming within the exception as stated in Rule 35? We are obliged to hold that such operations do come within the meaning of this rule, and such telephone communications received by train crews were permissible. Webster's Collegiate Dictionary defines a spur—

"Something projecting like, or suggesting a spur—Railroading,—short for spur track."

Thus it is clear the exception to the rule applying to the trackage to the National Tube Company is a spur, within the meaning of the rule, and we are of the opinion Carrier was acting within its rights in the method used by such operations. It cannot be said Telegraphers are being deprived of positions formerly held by them, since the work performed at Ellwood City never was work performed by Telegraphers, but is work permissible under Rule 35. We believe the principles as applied in Awards 1396, 4516 and 6123 apply here.

As to alleged violations by Carrier in permitting motor car operators to use the telephone where no operators are on duty, we hold such is not a violation of the Agreement by Carrier, and reaffirm our holding in Award 5023. Such requirements as herein alleged do not in any way encroach upon the Telegraphers' Agreement.

As to other alleged violations, such as lineups by employees not under the Agreement, we have held such is permissible to obtain or receive by telephone, and cannot be construed as a violation of the Agreement by Carrier.

Many Awards of this Board have been cited by the parties to sustain their contention are not applicable to the facts here before us. Award 5901 cited by the Organization and relied upon by them, clearly and concisely discusses a claim of somewhat similar facts, and we agree with the discussion made covering Rule 35 of the Agreement. But that Award is not applicable, since the claim presented was predicated on train orders required during a temporary period, and was decided on the question—"Did Carrier's action displace operators?" As we stated in that Award—"Each case must turn on its own facts and merits", the same applies to the case before us.

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 did not violate the provisions of the Agreement as alleged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 6th day of October, 1953.