

Award No. 6443

Docket No. TE-6330

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pittsburgh & West Virginia Railroad, that:

(1) Carrier on April 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 1950, violated and continues to violate the Agreement between the parties, at West Liberty, Pennsylvania, in requiring employes not covered by said agreement to handle orders and other communications affecting movement of trains, and;

(2) E. W. Sturges, Sr., Agent-Telephoner at West Liberty, Pennsylvania, be paid for "call or calls" for each day such violations occurred, as set forth herein or occurred thereafter as shown by records of Carrier.

EMPLOYES' STATEMENT OF FACTS: Carrier herein is a small, but busy, industrial (freight only) line serving the Pittsburgh, Pennsylvania area. Its principal line of railway extends from Connellsville, Pennsylvania, to Pittsburgh Jct. (Ohio) a distance of about 111 miles. In addition it has about six short branches off the main-line. West Liberty, Pennsylvania, is 51.7 miles from Connellsville and 59.5 miles from Pittsburgh Jct. (Ohio).

Rook, Pennsylvania, is Carrier's headquarters and where the general operating offices, including dispatchers office, is located. Rook is 4.4 miles from West Liberty. West Belt Jct. is 1.1 miles in a northerly direction from West Liberty. From West Belt Jct. trains move over West End Branch to West End, Pittsburgh. It is the operation of trains over this Branch that gave rise to the instant dispute.

For years Carrier has had in force its Time Table No. 26 (effective Dec. 28, 1941) which in Rule 4 of Special Instructions provided:

"The operation of Trains and Engines, over Pittsburgh and West End Branches will be handled by Train Orders, All trains and Engines must obtain Orders before using track over these Branches."

Rule 9 provided:

"Telegraph Offices:

Location	Time Open
West Liberty	24 hours"

When the former practice of train order operations on the West End Branch was first begun, the traffic was quite heavy compared to the operations when C.T.C. was installed at West Liberty in 1950.

Operations over the West End Branch are Yard movements, consisting of a daily transfer movement in each direction between the Carrier's West Liberty Yard (via the West End Branch) and The Pittsburgh & Lake Erie's McKees Rocks Yard, plus minor industrial switching on the West End Branch, performed by the Carrier about three times each week. Alternately, by two-month periods, the Carrier and The Pittsburgh & Lake Erie furnish the crew for the transfer. During the two-month period when the Carrier furnishes the crew, the transfer also does the industrial switching on the West End Branch mentioned above, and at other times this switching is performed by the Carrier's yard crews from Rook Yard.

The Employees in this case are claiming that the yard operations over this West End Branch must be handled by written train orders and OS forms and that, by not doing so, the Carrier is violating the Telegraphers' Agreement, and further, that for such alleged violation the Carrier should be required to pay a "Call or Calls" to the Agent-Telegrapher at West Liberty each day this track is used. The particular dates referred to in the Employees' claim herein fell during the two-month period when the transfer was being operated by the P&LE.

POSITION OF CARRIER: In Paragraph 1 of the Employees' Claim in this case, the Employees state that the "Carrier . . . violated . . . the agreement . . . in requiring employees not covered by said agreement to handle orders and other communications affecting movement of trains . . ." It should not be taken from this that any train orders or other communications of record were actually used, as this was not the case. This is merely the Employees' way of saying that they think they **should** have been used. As shown in General Notice No. 905, quoted in the foregoing Carrier's Statement of Facts, the daily yard transfer movement over the West End Branch is actually under the personal direction of the Train Dispatcher, who is located at Rook Yard, within the same switching district. This daily transfer and the occasional switching moves operate under yard rules and are controlled by verbal permission, just as much heavier yard movements are handled in yard territory on this and practically every other railroad in the country, without the use of train orders or other written communications of record, and without being required to use employees covered by the Telegraphers' Agreement in connection with such moves.

Under the circumstances the Carrier is not obligated to use such written forms for these infrequent movements over the West End Branch. Consequently the Employees' claims in this case are not justified and should be denied. The Carrier respectfully requests your Honorable Board so to decide.

OPINION OF BOARD: The area involved herein includes a stretch of track running out of the yards at West Liberty, Pa., to a connection with the P&LE RR, a distance of 2.3 miles. The Carrier's main line is now equipped with C.T.C. and as a result of this installation the services of two operators at West Liberty have been dispensed with.

Previously, the operators at West Liberty handled any orders required for those trains operating on the branch; but now the Carrier has abolished the old operating rule governing such trains and has issued General Notice No. 905 requiring train crews to call the dispatcher for oral authority to use this track.

The Carrier states that this branch is within yard territory and supports the statement by showing that there are yard limit boards on both sides of the yards where this branch has its terminus connecting with the Carrier's main line. It is further shown that by rules, Rook-West Liberty Yard includes West End Branch.

Even admitting that this track is within yard limits does not, however, change the character of the details of the work in question. Before the advent of C.T.C., operation on this branch was regarded as a train movement, and since C.T.C. the movements of trains are controlled by communications of record, growing out of General Notice No. 905. The communications are verbal it is true; but we note that it is also admitted by the Carrier, that if a record is kept by the dispatcher, it is for his own convenience. The character of these messages is such that they inform the Carrier of times of departure, consist, numbers of the trains, and the verbal permission required. In other words the communications are orders and are recorded.

Under the limitations of the governing agreement, such communications work is set apart to telegraphers.

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 scope rule has been violated and

That "calls" as claimed should be allowed.

AWARD

Claims 1 and 2 sustained in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 15th day of January, 1954.

DISSENT TO AWARD 6443—DOCKET TE-6330

This Award seeks to invade the right of Carrier Management to promulgate and enforce operating rules governing the safe and efficient conduct of its business. It is not disputed in this record that General Notice No. 905 is such an operating rule; that it required only oral instructions to crews handling engines and cars within yard limits; and, that the crews did operate within yard limits.

The majority in this Award give recognition to the Carrier's admission "that if a record is kept by the dispatcher, it is for his own convenience" but commit a grave error in holding that the keeping of such a record, as a mere personal convenience, makes the Carrier liable under the Telegraphers' contract. Such a holding is manifestly unsound for the reason that it purports to create liability for the convenient performance of an unnecessary act over and beyond the express provisions of the Carrier's written instructions. We cannot lawfully find that Carrier employees have done more than is required

and then hold that the very doing of it fabricates a framework of liability under which the Carrier can be ordered to pay more money in the form of wages. The Award is a nullity for these reasons and necessitates our dissent.

/s/ R. M. Butler

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ C. P. Dugan

/s/ E. T. Horsley