

Award No. 6825
Docket No. TE-6373

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis C. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Denver and Rio Grande Western Railroad:

(1) That Carrier violated and continues to violate Agreement between the parties, when on the 1st day of January, 1951, and daily thereafter, it permitted and required, Section Foreman at Winter Park, Colorado, an employe not subject to said Agreement, to handle written communications (communications of record), concerning operation of Motor Car in Moffat Tunnel, which work is within the Scope of the Telegraphers' Agreement, and;

(2) That C. D. Shafer, Agent-Telegrapher, Winter Park, Colorado, who was available for service, be compensated, under Rule 8, one "call" for each and every violation since January 1, 1951, as may be shown by records of Carrier.

Note: The reparation due claimant to be determined by joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect an Agreement between The Denver and Rio Grande Western Railroad Company, hereinafter referred to as Carrier or Company and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The Agreement is a collective bargaining contract, governing wages, hours and conditions of employment for Employees of Carrier represented by The Order of Railroad Telegraphers and became effective on June 1, 1946. A copy of same has been, by Carrier, filed with this Board, and by reference is included herein as though set out word for word.

The parties hereto are Carrier and Employees, within the meaning of the Railway Labor Act and The Third Division of this Board has jurisdiction of the parties and subject matter.

The subject matter involves, performance of work, solely and exclusively reserved to Telegraphers, under the Agreement, by other employes of Carrier not subject to said Agreement.

OPINION OF BOARD: This Claim involves the manner in which the operation of motor cars has been controlled with respect to their occupancy of Moffat Tunnel since January 1, 1951.

Moffat Tunnel contains about six (6) miles of the Carrier's trackage between Denver and Orestod, Colorado. There is a telegraph office at Winter Park, which is at the West entrance of the Tunnel, and a section gang is also stationed there. Other section gangs are stationed at (the) East Portal.

Prior to 1951 there were three (3) telegrapher positions at Winter Park and the use of the Tunnel by motor cars was controlled by block orders issued by authority of the Carrier's Chief Dispatcher and transmitted by telephone to a telegrapher at Winter Park. The telegraphers received, repeated and delivered written permission for motor cars to occupy the Tunnel and made records of such orders. Movements in and through the Tunnel were protected by means of signal indications located at each entrance and controlled by the telegraphers on duty.

Effective January 1, 1951, the Carrier established a Centralized Traffic Control System, by means of which train movements, including cars, were controlled directly from the Dispatcher's office at Denver, and two of the telegrapher positions at Winter Park were simultaneously abolished, leaving only an agent-telegrapher at that point. Under the new arrangement operators of motor cars are required to call the Dispatcher direct by telephone for authority to use the track. When such authority is given the Dispatcher protects the movement by signals controlled from his office. The Dispatcher and the operator of a motor car are both required to make a record of the time granted.

The agent-telegrapher at Winter Park has assigned hours from 3:00 P. M. to midnight and lives at the station. The demand of the Claim is that he should be called to handle communications pertaining to the operation of motor cars in the Tunnel when not on duty and compensated for such services on a "call" basis.

The Employees contend that the Claim should be sustained because the manner in which movements of motor cars in and through Moffat Tunnel as now controlled is basically and fundamentally the same as it was before the installation of the CTC system. They point out that the telephone is utilized and that "communications of record" are required, as was the case for many years prior to 1951. They further say that whether the issue is approached, (as they say it should be), from the broad point of view that telegraphers' work embraces the transmission and receiving of messages, orders and reports of record, or from a consideration of the history, custom and practice that prevailed with respect to the particular activities here involved, the result must necessarily be the same.

It is asserted in support of the Carrier that the manner in which motor car traffic in and through Moffat Tunnel has been regulated since 1951 has been no different from that which has generally prevailed on other parts of its system since the adoption of the CTC system, without any protest on the part of the Organization. Attention is directed to the fact that CTC has been defined by the ICC as a system of railroad operation that dispenses with the necessity of train orders, and that Part 3 of Rule 21 of the effective Agreement provides that the copying of instructions relative to entering or occupying main track in CTC controlled territory will not be construed as a violation.

If what the Carrier did in the instant case was no different than that which generally resulted from the adoption of the CTC system of signal controls on its property we would be required to deny the Claim, even though Carrier's action resulted in the displacement of the two telegraphers whose services were dispensed with at Winter Park. We say this because we do not find in the Agreement any provision that prohibits the Carrier from making use of CTC facilities in its discretion. If the Claim can be sustained, therefore,

it must be because the installation of CTC controls at Moffat Tunnel involves factors not present in other installations on Carrier's railroad, and that the changes made in respect to operations at the Tunnel violated some provision of the effective Agreement. We have searched the record in vain for any such distinguishing factors.

In light of the ICC definition and Part 3 of Rule 21, referred to above, we cannot regard the record required to be made by the foremen of motor car gangs of their telephone conversations with the Dispatcher's office as constituting "communications of record", in the sense that that term has been held to be decisive in determining whether telegraphers' work has been performed. While Rule 21 was the result of a mediation agreement involving the rights of telegraphers and train and engine service employees, we see no basis for holding that said Rule should not be held applicable to similar functions performed by section foremen. Neither can we say that the generally accepted historical, traditional and customary practices, recognized by the parties through the years on other parts of the Carrier's railroad, can have no bearing on the effect of the installation of the CTC system at Moffat Tunnel.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1954.