

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Kansas City Terminal Railway Company that,

1. The carrier violates the Telegraphers' Agreement by imposing upon the Train Directors at Kansas City Terminal Tower #2, Kansas City, Missouri and upon the Levermen at Kansas City Terminal Tower #14, Kansas City, Kansas, without their consent, the duties and responsibilities of operating street crossing flagging signals at nearby street crossings.

2. These duties shall be removed from the Train Directors at Kansas City Terminal Tower #2 and the Levermen at Kansas City Terminal Tower #14 unless a mutually satisfactory compensation is agreed upon by the carrier and the representatives of the employees; and

3. Until the violation is corrected or suitable compensation is negotiated for these duties and responsibilities the carrier shall pay, starting December 9, 1952, to the employees who have occupied these positions, for each day they have had the responsibility for operating the crossing flagging signals the daily rate called for by the carrier's agreement with the Brotherhood of Maintenance of Way Employees, the agreement under which this work was formerly performed, in addition to the basic salary already paid to them for the performance of the normal function as Levermen.

EMPLOYEES' STATEMENT OF FACTS: There was in effect, at the time this dispute arose, an agreement by and between the parties dated August 1, 1924, governing working conditions, etc., subsequently revised in accordance with Mediation Agreement A-2070 and the Forty Hour Week Agreement and completely revised effective June 1, 1953.

Kansas City Terminal Tower #2 is located near 11th and Santa Fe Streets, Central Industrial District, Kansas City, Missouri. Eleventh Street, at this point, is not open to vehicular traffic but is obstructed by railroad tracks and runs generally East and West; Santa Fe Street runs North and South and crosses Eleventh Street just west of the tower building.

Flagging of this crossing has been performed for years by employees occupying positions covered by the agreement between this carrier and the Brotherhood of Maintenance of Way Employees. These flagmen have had

the 1951 flood, in exactly the same manner they had been, claim was filed for performing crossing flagmen's work.

The Telegraphers' Agreement was open for negotiation from 1951 until May 1953. Proposals and counter-proposals were submitted by both parties on various rules and various conditions and at no time did the Employees submit a rule or attempt to discuss a rule to cover the operation of crossing protection. The final agreement did not make specific provisions for crossing protection at these locations. There certainly can be no violation of a rule of an agreement where there is no rule to be violated.

The claim of the Employees should be dismissed and the Carrier requests the Board to so hold.

All of the above has been made known to the Organization by correspondence or in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization claims that its agreement with the Carrier was violated when the Carrier assigned Train Directors at Tower No. 2 and Levermen at Tower No. 14 at the Kansas City Terminal, Kansas City, Missouri, the operation of street crossing flagging signals at nearby street crossings. The claim is that such duties be removed from the assignment of these employees unless satisfactory compensation for the added duties be agreed upon.

Towers 2 and 14 are manned by telegraph service employees around the clock. There is a street crossing near each tower for which protection is furnished by the handling of controls within the respective towers. From 1914 to 1951, it appears that both telegraphers and crossing watchmen under the Maintenance of Way Department participated in furnishing crossing protection near Tower No. 2. As to Tower 14, the positions of flagmen were abolished in July, 1949, and crossing protection was handled from the tower. A rate adjustment was demanded at this time and denied. In July, 1951, a flood of great proportions destroyed the crossing protective devices. When rail traffic was restored, flagmen were again used until new crossing protective devices were again put in operation on December 9, 1952. The flagmen positions were abolished and the Train Directors and Levermen at Towers 2 and 14 were thereafter required to operate the crossing protective devices. This claim was then filed and progressed to this Board.

The Organization relies upon the scope rule of the current Agreement to secure a sustaining award. The scope rule designates positions but does not describe the work of telegraphers. There is nothing in the Agreement relating to the operation of crossing protection devices. The Organization asserts the operation of crossing warning devices is placed in the Maintenance of Way Agreement and, consequently, it is not the work of telegraphers. We point out that telegraphers have performed this work for many years on this railroad. Their claim for extra compensation is, in effect, an admission of their right to perform the work. The claim involves only the question of pay. We think it can be said that the scope rule reserves all telegraphers' work to telegraphers but it does not have the effect of ridding telegraphers of other work which might be assigned to them.

The correct rule is stated in Award 4572 wherein it is said:

"The violation charged against the Carrier is the assignment of work not covered by the scope rule of the agreement to an employee covered by the agreement. The scope rule simply specifies the employees covered by the agreement and establishes the various types of work to which the covered employees are entitled and which the Carrier is required to assign to them. It does not, nor does any other rule of the agreement, prohibit the Carrier from assigning other duties to such employees."

To the same effect in Award 5018. The fact that Carrier may have assigned the work to employes under the Maintenance of Way Agreement is not material in determining the rights of these employes. Employes under that agreement may have a claim for its violation, but it cannot be used by employes of another craft as a basis for claim. Claimants must establish their claim under their own agreement.

The present case appears to be controlled largely by the language contained in Award 1078 wherein it is said in a somewhat similar case:

"Accordingly, without deciding that the flagging of crossings constitutes in all circumstances a proper requirement under the scope rule of the agreement, and without prejudice to the rights of other organizations in connection with such work under their own agreements, it is the opinion of the Board that no violation of the Telegraphers' Agreement has been established in this case."

The work of telegraphers belonging exclusively to them is the work traditionally performed by the occupants of the positions described in the scope rule. The Carrier does not violate the Telegraphers' Agreement by assigning other duties to them such as the operation of crossing warning devices from their respective towers. This is so even if Maintenance of Way employes have an exclusive right to do the work, a matter which we do not here decide.

We point out also that we are not authorized to establish rates of pay or otherwise rewrite contract provisions. If a new rate of pay is requested because of new duties assigned, it must be done by negotiation and the mediation provisions contained in Section 6 of the Railway Labor Act. This conclusion is supported by the fact that telegraphers have performed this work in whole or in part for many years back. The Telegraphers' Agreement does not include the work of operating crossing warning devices. Neither does it purport to prevent telegraphers from doing the work. Nor is there any claim that higher rated work is being performed for which the higher rate should be paid. There is no violation of the Telegraphers' Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon; and upon the record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 1st day of August, 1955.