Award No. 8264
Docket No. TE-7138

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad that:

1. The Carrier violated the terms of the Agreement between the parties when it required or permitted employes outside of the coverage of said agreement to perform block operator work at Shannock and Kingston, R. I., May 19, 20, 21, 22 and 23, 1952.

2. In consequence of this violation the Carrier shall pay the two senior idle employes on the seniority district, extra in preference, a day's pay each equivalent to eight hours, on each date listed in paragraph 1, and each subsequent date that such outside employes are so used.

EMPLOYES' STATEMENT OF FACTS: There is an agreement bearing effective date of June 15, 1947, revised September 1, 1949 between the Carrier and the employes represented by The Order of Railroad Telegraphers, which agreement was in effect on the dates involved in the claim.

On the dates mentioned Carrier undertook a rail laying program between Shannock, R. I., and Kingston, R. I., located on a section of double track between New Haven, Connecticut, and Providence, R. I. Exclusive use of one of the tracks was required by the construction forces, and it became necessary, therefore, to operate trains on a single track between these points. This was accomplished by routing trains from the double track to the single track and permitting them to proceed on the one track to the opposite end of the single track section to be switched back to their proper running track on the double track section, moving with the current of traffic. At Kingston the switches of the interlocking were used, and at Shannock a hand thrown crossover switch was employed. At each of these terminal points of the single track section (Kingston and Shannock) train service employes were stationed for the purpose of blocking and directing the trains. At Kingston the employe was a conductor, at Shannock a trainman. These employes, by means of telephone, conveniently located, communicated with each other information as to location of trains, trains to be given preference in movement, trains to be held back (blocked) and

only when authorized by the block signal indication displayed. Traffic diverted to track 1 was not governed by any block system at all. Such movement bears no resemblance to the manual block rules which are in effect in other portions of the railroad where automatic signals are not installed. The operation of manual block rules depends upon the maintenance of accurate and complete records over all sections of the track controlled by a block operator. These are on forms provided by the Company designed to minimize any possible error and must be filed as permanent records. In contrast, no reports of any type were required to be maintained or kept by the conductor or flagman and no written record was made or exists of the movement of trains under their control.

There is maintained at Kingston an interlocking manned by operators under the Agreement with Employes. As required by the rules, the operator on duty continued to report to the dispatcher and there were entered on the dispatcher's sheet the times of all trains going through Kingston. This may be compared with the situation at Shannock where there was no operator on duty, no report or record was maintained to or by the dispatchers of trains passing that point, these demonstrating the absence of any communication of record handled by the conductor or flagmen.

It follows that the operating of the pilot arrangement has not been by custom or practice delegated to operators but rather from the beginning to employes of an entirely different craft. In the operation of the rule the techniques and facilities customary in conducting a block operation are not used nor are the operating rules governing block systems in effect. The classification of block operator was included in the Agreement with Employes effective at the time the pilot arrangement was first introduced and has been continuously part of the schedules since that date. It is persuasive that for a period of over thirty years Employes made no claim to this work until the disputes covered by the decisions attached as Exhibits A and B arose.

The claim should be denied in every particular.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

OPINION OF BOARD: This is a Scope Rule case involving facts similar to those involved in Award No. 8263 decided today. Double track was being single tracked for rail laying on the dates involved, between Kingston and Shannock, Rhode Island. A conductor and a flagman were placed five miles apart, in telephone communication with each other and with the dispatcher, to receive and transmit information as to approaching trains, to open the block thus set up to one train while closing it to another, etc. We have held in Award No. 8263 that this was typical telegrapher or block operator work, and under the Scope Rule in that case belonged to the telegraphers. The Scope Rule in the present case is similar, and requires a similar holding.

Where the Carrier in Award No. 8263 relied upon the contention that such single tracking had always been done under the "human staff system", the contention here is that it has always been done on this property by the "pilot arrangement" provided for in Rule 44 of the Carrier's operating rules. That rule reads as follows:

> "Unless otherwise provided, movements against the current of traffic, not authorized by Form R train orders, may be made by pilot arrangement. The movement will be supervised by a competent employe whose verbal instructions will supersede time-table superiority and take the place of train orders.
>
> "When communication is available, the train dispatcher must inform the employe in charge regarding approaching trains, and

the trains to be given preference, and, when practicable, notify approaching trains of the pilot arrangement.

"When communication is not available, trains should be moved in accordance with their relative importance.

"A flagman must be placed in the direction of opposing traffic, a sufficient distance beyond the detour crossover to insure protection with instructions to hold all trains. In addition to displaying stop signals he must there place two torpedoes on each of the opposite rails, and remain where stationed, holding the trains until personally instructed otherwise by the employe in charge.

"A competent man with stop signals, properly instructed, must also be stationed at each detour crossover and at each inlet between detour crossovers before trains are authorized to proceed.

"In automatic block system territory the switches of each detour crossover must be operated to hold the automatic block signals at Stop-indication.

"When an engine or motor hand car is used it must follow the train or trains being piloted."

This rule does not provide for trainmen to be stationed at each end of the stretch of road to control train movements through telephone communication with each other and with the dispatcher, as was done in this case. No pilot was used, and no pilot engine was used.

The Carrier has argued this case as if the issue were whether the handling of the "pilot arrangement" is telegraphers' work under the Scope Rule. We do not think this is the issue. It may be conceded that the work of a pilot is not telegraphers' work. The issue here is whether the method used in this case was a pilot arrangement or a block operation, and we hold it was a block operation.

The Carrier has offered evidence, in the form of affidavits, to the effect that the pilot arrangement has always been handled by trainmen under Rule 44. None of those affidavits state facts from which we could find that the system used here was a pilot arrangement under that rule, and the affidavits are therefore irrelevant to the issue before us.

It would appear, from the meager evidence in the record, that what used to be accomplished by a pilot arrangement was in this case accomplished by a blocking operation and that the Carrier simply called it a pilot arrangement.

The Carrier also contends that the claim cannot be sustained because notice was not given to the Organization representing the trainmen. The sustaining of this claim does not in any way affect the rights of the trainmen. In an action by A for damages for breach of a contract between A and B, it is no defense for B that compliance with that contract might render it liable to X for breach of a contract between B and X. The award in this case will simply provide for pay for certain telegraphers for certain specified dates. Such an award deprives the trainmen of no rights whatever. The situation is quite different from that presented in **Order of Railroad Telegraphers v. New Orleans, Texas and Mexico Ry. Co.** 229 F. (2nd) 59, (C.C.A. 8th Circuit), where Certiorari was denied by the Supreme Court of the United States, 76 Sup. Ct. 548. In that case the Circuit Court of Appeals held that the Brotherhood of Railway Clerks was an indispensable party because enforcement of Award No. 4734 "would necessarily include the issuance by the Federal Court of a mandate requiring the defendant carrier to dispossess a clerk now in its employ of his job". No mandate affecting the trainmen is necessary to the enforcement of the award here

rendered. This also distinguishes Award No. 8200 from the case before us. The trainmen are therefore not indispensable parties here.

A number of perplexing questions concerning this entire question of notice require to be authoritatively answered by the Supreme Court before this Board can proceed with certainty in these cases. Not the least of these concerns the jurisdiction of this Division after notice has been given. Jurisdiction of the claims of trainmen is vested in another Division. Can we by notice acquire jurisdiction to determine the rights of trainmen? Congress has conferred jurisdiction on this Division. Can we, by our own act, enlarge it, and by so doing oust the jurisdiction of the First Division? This and other questions remain to be answered. It is to be noted that this question did not arise in the New Orleans, Texas & Mexico case cited, for jurisdiction of both the organizations involved there is in this Division

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March, 1958.

DISSENT TO AWARD 8264, DOCKET TE-7138

This Award commits serious error because it ignores an undisputed practice extending over 40 years by which Conductors and/or Trainmen have controlled the train movements involved in these circumstances.

Our dissent to Award No. 8263 issued today involving similar operation will have equal force and effect here.

/s/ R. M. Butler
/s/ J. F. Mullen
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ J. E. Kemp