

Award No. 8315
Docket No. TE-7714

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that:

The three telegrapher-clerk positions at Stockham, Arizona, Tucson Division, be additionally compensated \$.018 an hour effective March 23, 1953, account required to operate a remote control signal located approximately 4000 feet east of Stockham Station.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement between the parties to this dispute bearing effective date of December 1, 1944 (reprinted March 1, 1951, inclusive revisions). This agreement and all amendments thereto are included, by reference, in this Submission.

There are three telegrapher-clerk positions at Stockham, Arizona, listed in the Wage Schedule at page 70 of the current agreement. These positions work seven days a week, eight hours a day, around-the-clock. Stockham is approximately 5 miles west of the City of Tucson at the end of double track. At this point the west bound trains move from double to single track. There is also a long siding at Stockham, capacity 141 cars.

Commencing March 23, 1953 the Carrier ordered certain changes made concerning the movement of west bound trains at Stockham. The following notice was issued by the Carrier:

"TIME TABLE BULLETIN NO. 69

TIME TABLE NO. 128

Special Instructions No. 4

Tucson Division

Tucson, March 16, 1953

All Concerned:

Effective 8:01 A. M. March 23, 1953 end of double track and station at Stockham moved westward 1.9 miles from M.P. 981.2 to M.P. 979.3 with crossover installed from westward track to single

[667]

additional compensation under agreement provisions referred to by petitioner, i. e., Rule 31(h), as follows:

"Employees regularly required to handle remote or centralized traffic control device shall be paid an additional allowance to cover such service predicated upon the extent of increased duties and responsibilities."

and Memorandum of Agreement of September 23, 1944 (copy attached as Carrier's Exhibit "D").

There is no provision in the current agreement which requires payment of additional compensation under circumstances present in this case, and attention is directed to the fact that while this Board has the authority to construe and enforce agreements, the principle that it does not have the authority to make changes in rates of pay, to increase rates of pay, or to write new rules, but only to apply existing rules, is so well established as not to require the citation of authority.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to March 23, 1953, Carrier's telegraph office at Stockham was located at Mile Post 981.2 and double track ended at Mile Post 980.95 where movement to single track was made through a spring switch. A semaphore signal was located next to the telegraph office and in order to indicate to trains moving on the westward main track that train orders were to be received at Stockham, or that such trains were not restricted at that station, it was necessary for the telegrapher-clerk to manually operate the train order signal, as provided in the second paragraph of Rule 211 of Carrier's Rules and Regulations of the Transportation Department which reads as follows:

"Form N train order may be issued to authorize lowering of train order signal arm several times and its return to stop position as a calling-on signal, at stations where letter type indicator for display of letter 'M' is not installed, and such operation of the signal will be an indication to an approaching train that orders are to be delivered which will authorize movement to the next station at least, against and ahead of all superior trains. Engineer must acknowledge this calling-on signal by sounding signal 14(b), and will proceed on main track to receive orders."

On March 23, 1953, Carrier made certain changes in its facilities and method of clearing trains through Stockham as indicated by the issuance of Time Table Bulletin No. 69 set forth below.

"TIME TABLE BULLETIN NO. 69

TIME TABLE NO. 128

Special Instructions No. 4

Tucson Division

Tucson, March 16, 1953

All Concerned:

"Effective 8:01 A. M. March 23, 1953 end of double track and station at Stockham moved westward 1.9 miles from M. P. 981.2

to M.P. 979.3 with crossover installed from westward track to single track at end of double track. Leaving switch of this crossover is spring switch equipped with facing point lock, normally lined for eastward track, and entrance switch of crossover from westward track is normally lined for crossover, but will be hand thrown by train order operator when necessary to head trains into westward siding Stockham. This siding extends west of cross-over, capacity 141 cars, and west switch M. P. 977.8 is equipped with spring switch with facing point lock, normally lined for main track.

"Rule 5 on pages 6, 7 and 8 of schedule section of time table No. 128 is modified as follows:

"Schedule time and train order time for eastward and westward trains at Stockham will apply at end of double track M. P. 979.3.

"Rule 211. Letter type indicator for display of illuminated letter 'M' and a unit for display of flashing white light, are installed on stub mast at M.P. 980.15, 3000 feet east of Prince Road Crossing. When letter 'M' is illuminated it will indicate that helping orders are ready for delivery at Stockham which will advance the train to the next siding at least. When flashing white light is displayed it will indicate that orders are ready for delivery which do not restrict the train at end of double track or that switch has been lined for train to enter westward siding at Stockham, and that orders will then be delivered which may restrict the train at fouling point at west end of westward siding, in which event, train dispatcher may O.K. clearance, and operator may deliver orders without requiring train to stop before entering siding."

The "M" indicator light is controlled by the train dispatcher. The flashing white light, located approximately 4000 feet east of the telegraph office, is operated by the telegrapher-clerks at Stockham and the operation of this signal is the basis for the claim.

The employees rely on Rule 31(h) and a Memorandum Agreement dated September 23, 1944, the pertinent parts of which are as follows:

"RULE 31

"INCIDENTAL DUTIES

"Section (h). Employees regularly required to handle remote or centralized traffic control device shall be paid an additional allowances to cover such service predicated upon the extent of increased duties and responsibilities."

"MEMORANDUM OF AGREEMENT

* * * * *

"The desire of the parties hereto to effect a complete and final disposition of all claims arising from the installation of 'remote control' interlocking, and 'take siding indicator' or 'M' or 'S' signals, at various stations, the operation of which has been required of telegraphers, with resultant additional duties and responsibilities, provides the occasion for this agreement."

* * * * *

"3. (a) At the following stations, where special signals commonly known as 'take siding indicators' or 'M' and 'S' signals, have

been installed and are operated by telegraphers, an additional allowance of 1 ½c per hour, separate and apart from the established wage rate, shall be allowed each telegrapher, but not more than one on any 8-hour shift at a station during the time that such signals are in operation, such allowance to be effective August 1, 1944 if not already in effect.

| | |
|-----------------|------------|
| Coyote | Eloy |
| Santa Margarita | Alamogordo |
| Surf | Gold Run |
| King City | Picacho |

“(b) Similar allowance shall be made at stations where future installations of this type may be operated by telegraphers.”

They maintain that the flashing white light is the remote control device such as “take siding indicator” referred to in the Rule and Memorandum Agreement.

Carrier maintains that the operation of the flashing white light did not increase the duties and responsibilities of the telegrapher-clerk positions and that the Rule and Memorandum Agreement do not support the adjustment claimed. That the only increase in duties and responsibilities on the positions in question was the requirement to operate a manual switch for which they are additionally compensated an arbitrary in accordance with the applicable rule. That the operation of the flashing white light merely supplanted the manually-operated train order signal.

It is not disputed that the flashing white light and the letter type indicator, which, when lighted, displays the letter “M”, were installed and initially placed in service on March 23, 1953.

The question to be decided is, whether the operation of the flashing white light, which, at a point outside the actual operating area of the station proper, must be considered remote, is in fact at this location, a “take siding indicator.”

A clear reading of Time Table Bulletin No. 69 inescapably suggests that the only “take siding indicator” occurs when the flashing white light is displayed by the occupants of the telegrapher-clerk positions at Stockham. The operation of the flashing white light cannot be distinguished from the use of the letter type signal referred to in the Memorandum Agreement. The Carrier may not evade the provisions of the applicable Rules by the installation of a signal, which, while physically different, serves the same purpose and requires the same additional duties and responsibilities for which an arbitrary payment has been provided under the Rules and Agreement here before us.

In sustaining this claim we are neither adding nor subtracting from the Rule and Agreement as written; we merely find a violation thereof and prescribe the rate established to conform therewith.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 violated the Rule and Memorandum Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1958.