

Award No. 8660
Docket No. TE-7748

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Chesapeake and Ohio Railway (Chesapeake District), that;

(1) Carrier violated and continues to violate the Agreement between the parties, when commencing on the 7th day of June, 1949, and continuing thereafter, it failed and refused to assign work of handling remotely controlled, electrically operated switches and signals from a central point at Richmond, Virginia, such switches and signals being located at "DX" Cabin, Richmond, Virginia.

(2) Carrier now be required to assign such work to employees covered by the Telegraphers' Agreement, and that all Employees adversely affected by being deprived of such work, shall be compensated retroactively to June 7, 1949, at rate of pay for comparable positions, for each and every day and shift such work is performed by employees not covered by the Telegraphers' Agreement.

EMPLOYEES' STATEMENT OF FACTS: This is a resubmission of the dispute which reached your Board on April 6, 1953, covered by Docket TE-6621. On the 29th day of November, 1954, in Award 6813, the following Opinion and Findings were issued:

"OPINION OF BOARD: Signals and switches controlling the entrance to Carrier's 2nd Street yard are operated by the Dispatchers at Main Street Station from a panel board located in the Dispatcher's office and have been so operated since June 7, 1949 with the installation of CTC operation. The work of operating the control instruments is claimed by the Telegraphers. Carrier contends, in effect, that the instruments are all part of the CTC operation which is contracted to the Dispatchers.

"The same contentions are made by Carrier in this docket with respect to jurisdiction as were made in our recent Award 6799 and in Award 6812 decided this day. In this docket it appears that no

apprehension expressed on behalf of the Claimant, however, to the effect that a denial of this claim will open the door to wide-spread abuses. This Board has always endeavored to interpret rules so as to preserve their purposes and the intent of the parties. Award 2817 is evident of that fact." (Emphasis supplied).

That the claim in this case, if allowed, is tantamount to the writing of a new rule, is obvious from the single fact that the Employees sought to negotiate into the Scope Rule the very work they are contending for in the instant claim.

Jurisdictional Question

As the Telegraphers in this case seek to have work now being performed under the Dispatchers' Agreement taken out from under that agreement and embraced within the Telegraphers' Agreement, a bona fide jurisdictional dispute exists, and the Carrier urges that the Board take proper action to protect the interests of the Dispatchers in connection with such work, by permitting representatives of that craft to be heard or otherwise make known their position in the matter.

* * * * *

In summation, the Carrier has shown:

1. There is nothing in the Telegraphers' Agreement providing that the handling of CTC machines is exclusively Telegraphers' work, and
2. The work in this case is properly assigned to Dispatchers in conformity with their rules and by custom and past practice on this property, as well as elsewhere in the railroad industry.

For these reasons, the claim should be denied.

All data submitted have been discussed in conference or by correspondence between the parties in the handling on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim involved in this docket has been before the Division on two prior occasions. It was first here under the designation of Docket TE-6621 on which Award No. 6813 was made on November 29, 1954. In that Award the claim was dismissed without prejudice because notice had not been given to the Dispatcher's Organization in accordance with the provisions of Section 3, First (j) of the Railway Labor Act as amended. The record shows that subsequent to the making of that Award notice was not given. However, on or about September 8, 1955 the claim was resubmitted and docketed as Docket TE-7748.

The case was thereupon handled by the Division, and eventually came before the Division with the present Referee sitting as a member thereof. On October 23, 1957 the Division made Award No. 8105. In this Award the Division held that the decision of the Division in Award No. 6813 was **res adjudicate** insofar, as the third party notice question is concerned. Therefore, Award No. 8105 deferred action on the merits in the following language:

"Consideration of and decision on the merits is deferred pending notice by the Division to the parties, carrier, Order of Railroad Teleg-

raphers, and American Train Dispatchers Association as contemplated by Section 3, First (j) of the Railway Labor Act as interpreted by the courts."

The record shows that following the issuance of this award notice was duly given and an opportunity to be heard was afforded. Therefore, the procedural defects having been corrected, the claim now comes before the Division for decision on the merits.

The docket presents a claim that the Carrier violated the Scope Rule of the Telegraphers' Agreement when it permitted or required employees other than telegraphers to operate remote, electrically operated switches and signals at a central point in Richmond, Virginia, such switches and signals being located at "DX" Cabin, Richmond.

It appears that prior to June 7, 1949, the cross-over switches and entrance switch to Second Street Yard were handled manually by the train crews. Train crews desiring to enter on the main lines from Second Street Yard would telephone "JN" Cabin and ask permission. The telegrapher receiving such call would call the Train Dispatcher for permission, following which the telegrapher would advise the trainmen involved.

Following June 7, 1949, movement through these switches was controlled by stationary visual signals which were operated by remote control from a central board in the office of the Train Dispatcher for the Rivanna Subdivision. This operation was therefore incorporated as part of a CTC system installed by the Carrier.

It is the contention of Petitioner that the operation of these signals and switches was work of a leverman or towerman, work which belongs to the Telegraphers.

The Carrier contends that the Telegraphers' Agreement contains no provision which makes the handling of CTC machines the exclusive work of telegraphers. Hence, it is argued, it may be assigned to dispatchers in accordance with their rules and the long standing practice on this property.

This type of case has been before the Division on many occasions. It should be pointed out that the switches here involved have never been operated by telegraphers. The question is whether telegraphers have a right to the present work since the switches and signals are operated from a CTC control board. It appears that the Division has, in the most similar cases, held that the right to such work is not exclusive to the telegraphers. On some cases the Division remanded to the parties because a jurisdictional dispute was involved. In the instant case the Carrier has contracted with the Dispatchers' Organization for the performance of such work under the circumstances here involved.

We do not find that there is any provision in the Telegraphers' Agreement or in past practice on this property which gives the telegraphers exclusive right to this work.

It appears to have been accepted on this property that where the CTC control board is located in a dispatchers' office, the dispatcher operates the board, and where it is located in a telegraph office it is operated by a telegrapher under the direction of the dispatcher. In the instant situation the Board is located in the dispatchers' office. To sustain this claim could very

well mean that the Carrier would have to place a man at the control board to press an occasional button or switch upon the instruction of the dispatcher. This could be justified only by an affirmative showing that the Carrier has contracted this work exclusively to the telegraphers. We have no such showing here. Therefore, the claim must be denied.

It is argued that the doctrine of laches bars this claim. While there is something to be said for the application of laches here, it is unnecessary to decide the point since the claim is being denied on other grounds.

The Division has expressed itself on this matter in several awards involving the same or similar issues as this claim. Awards No. 2804, 4452, 4768, 8544.

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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1959.