

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Carroll R. Daugherty, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE DELAWARE AND HUDSON RAILROAD CORPORATION**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware and Hudson Railroad, that:

1. Carrier violated the Agreement between the parties hereto when, on August 24, 25, 26, 27, 28, 1954, it caused, required and permitted a train service employe, not covered by Telegraphers' Agreement, to perform work of "OSing" (reporting) arrival of trains and transmitting consists of same at North Creek, New York, which work, under the Telegraphers' Agreement, was reserved solely and exclusively to employes covered by said Agreement.

2. Carrier shall compensate Agent-Telegrapher, J. M. Parkis, for one call, as provided in Article 3 (d), for each and every date as above set forth, and, further, that he be compensated for one call for each and every subsequent date such violations occurred.

3. Carrier shall be required to permit joint check of records to ascertain violations occurring subsequent to the foregoing dates, at North Creek.

**EMPLOYES' STATEMENT OF FACTS:** There is in full force and effect a collective bargaining agreement between The Delaware and Hudson Railroad Corporation, hereinafter referred to as Company or Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The Agreement became effective July 1, 1944 and by reference is included in this submission as though herein set out word for word.

The instant dispute was handled on the property in the usual manner to the highest officer designated by Carrier to handle such disputes, and failed of adjustment. This dispute is submitted to the Third Division, National Railroad Adjustment Board, in accordance with the provisions of the Railway Labor Act, amended.

At North Creek, New York, Carrier maintains one position under the Telegraphers' Agreement, with the classification of Agent-Telegrapher. It is what is called a one-man station. J. M. Parkis was the regular occupant of the position at all times hereinafter mentioned.

There was one freight train operated from North Creek to Saratoga Springs, and return, Monday through Friday, reporting on duty at North Creek at 6:45 P.M., all service being at a time when there is no telegraph service being available.

On the return trip, the conductor, without being requested or required by the carrier to do so, would use the carrier's telephone and report to the train dispatcher the arrival time, loads, empties, and tons handled into North Creek. In giving this information, he would also report his train either passing Corinth or the time it stopped and departed there with the loads, empties, and tons in and out.

There has never been any requirement of the carrier for a conductor to make such a report. It is sufficient if the conductor, on his arrival, leaves this information at his final terminal in message form to be relayed by the telegrapher whenever the station was opened. With the accessibility of the telephone, the conductors gradually used same for different matters concerning their trains, until it came to a point where they were reporting unnecessary information to the train dispatcher. This practice has since been stopped, such information now being furnished the carrier by the telegrapher while on duty.

There would never be any necessity for calling out an operator to relay the information to the train dispatcher as the report made over the telephone by the conductor was not required at that specific time. The manner in which the information is now being relayed by the telegrapher after he begins his tour of duty verifies the carrier's position. No loss was sustained by the telegrapher at North Creek. He merely had less work to do during his tour of duty. In fact, Agent-Telegrapher Parkis, mentioned in Part 2 of the claim, never made any direct claim to the carrier that he was being deprived of the work of forwarding these reports. He now has this information to furnish the train dispatcher after he reports on duty and it is received in sufficient time for carrier use.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made a part of the particular question in dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant Parkis, Agent-Telegrapher at Carrier's one-man station in North Creek, New York, northern terminal of Carrier's Adirondack Branch from Saratoga Springs, New York, worked Mondays through Fridays, 7:15 a.m. to 4:15 p.m., one hour off for lunch. On said Branch, Carrier operated a freight train that normally left and returned to North Creek during hours when claimant was off duty.

Beginning Tuesday, August 24, 1954, and continuing each subsequent day through Saturday, August 28, 1954 (a rest day of claimant), and allegedly for later dates not specified in claim, the conductor of said train reported at North Creek the arrival and consist of his train as of North Creek and as of a preceding station, Corinth, to his train dispatcher.

There are no documents of record establishing that the parties argued at length the merits of the dispute on the property. On the contrary, the written communications between them were laconic and limited mainly to claim and denial. Final declination by Carrier's highest official designated to handle such matters was made on February 23, 1955, almost nine months before the Organization notified this Division of intention to file an ex parte submission.

The Organization asserts that, on the basis of the Scope Rule of the parties' agreement and awards of this Division related thereto, the work of sending "OS" reports of record belongs exclusively to telegraphers. The Carrier defends on the basis of contrary past practice on the property and an unsuccessful effort by the Organization to negotiate such exclusiveness into the Agreement.

Over the years this Division has developed, for cases of this sort, the principle that (1) scope rules of this sort name covered positions rather than specific work and functions; (2) therefore as to said covered work and functions, said scope rules are ambiguous; and (3) therefore said rules must be interpreted on the basis of past practice, tradition, and custom as to said work that have seemed to be mutually acceptable to the parties. The Division has then proceeded to apply said principle to the facts of each particular case.

This case-by-case approach is not possible here. The record of the instant case contains no proper facts from which reasonable inferences can be drawn. The Board is of the opinion that the Employees have presented assertions unsupported by real evidence of probative value. The evidence presented by Carrier at the oral hearing before the Board is not admissible because (1) it was not discussed on the property; and (2) even if it had been so discussed, its relevance to the Branch here involved is not convincingly established.

Accordingly the Board is persuaded that this case should be remanded to the parties for the development of adequate, relevant evidence on the manner in which the parties' Scope Rule has been interpreted during past years on this Branch of Carrier's property.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 case should be remanded to the parties for the development of adequate factual material in accordance with Opinion.

#### AWARD

Claim remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February, 1959.