Award No. 8773
Docket No. TE-8373

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, 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 Telegraphers' Agreement was violated when, commencing on or about May 15, 1954, Carrier improperly assigned to employes not subject to said Agreement, the duty of operating CTC machine in South Station, Boston, Mass.

2. The Centralized Traffic Control machine or machines placed in operation in South Station, Boston, Mass., on or about May 15, 1954, shall be operated by employes under the coverage of the Telegraphers' Agreement.

3. Until the violative condition is corrected by assignment of employes under the Telegraphers' Agreement to each of three eight (8) hour shifts, seven days per week, Carrier shall compensate each of three senior idle spare employes on a day-to-day basis, or if no spare employes available, to three senior idle regular employes, the equivalent of eight (8) hours (one day's) pay at the appropriate rate.

EMPLOYES' STATEMENT OF FACTS: An Agreement is in effect between the parties bearing effective date of September 1, 1949, copies of which are on file with the National Railroad Adjustment Board, which Agreement is by reference made a part of this Statement of Facts.

Prior to May 15, 1954, Carrier maintained and operated a single track line of railroad between Braintree, Massachusetts, and Buzzard's Bay, Massachusetts, over which trains were operated by block system and train orders, the blocking of trains and handling of train orders being performed by employes covered by the Telegraphers' Agreement. Effective May 15, 1954, the Carrier installed a centralized traffic control system on this line, operating trains by means of levers controlled from a machine installed in the office of train dispatcher in Boston, Massachusetts, this operation being substituted for the former type of method of train movement. Although the Agreement, in its Scope Rule carries the designation of C.T.C. Machine Operator, the

"**ARTICLE 1**—They asked that the words, 'Signal Station Operators', be included to which I see no objection. As an addition, they ask that the scope also included 'Operators of centralized traffic control machines'. Discussion developed that the purpose they really had in mind was not only **to protect their representation for the occupants of such positions** but that they establish a basis of justification for an increase in rate. They mentioned Promenade Street Signal Station at Providence where we have three Operators at 89c and three Levermen at $.8475 as compared with Tower No. 237 where we have three Directors at 98c and three Levermen at 87c." (Emphasis supplied.)

It thus appears the purpose was to bargain for existing assignments, not for jobs of a character not then in existence.

Those existing positions, of which Promenade Street was an example, were towers in which were consolidated a number of separate mechanical interlocking plants, all on an electric relay machine with levers for the operation of switches and signals. Such electric interlocking plants are common on all railroads and are generally manned by the telegraphers' craft.

Thereafter agreement was reached on the inclusion of the cited language on the basis indicated. No reference at any time was made to employes in dispatching offices.

In August, 1945, being dissatisfied with the agreement as negotiated with the general committee on the property, the grand lodge assigned a vice president to participate, new proposals were served and new discussions had. No change was made in the language relied on here, however.

It is Carrier's position on the merits that the assignment of operation of the machine in question has been properly made and that no different commitment has been made in the scope rule to Employes.

The claim shoud be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization alleges that on May 15, 1954, Carrier installed and put into operation a CTC machine at South Station, Boston; that such is being improperly operated by employes of a craft outside the agreement involved here.

It is contended that the operation of such Centralized Traffic Control machine belongs to the Telegraphers by agreement with Carrier; that Carrier has violated the provisions of the agreement by assigning the operation of such CTC machine to employes outside the craft, thereby depriving the employes, claimants herein, from performing such work.

The record before s shows that in 1947, when negotiating the present agreement, both the Carrier and the Organization agreed and wrote into the Scope Rule a new and additional classification of work and designated as "CTC Machine Operators." Nothing is noted in the agreement as to the loca-

tion of such machines. When the CTC machine was put into operation, Carrier assigned employes represented by the American Train Dispatchers Association to operate the machine. Train dispatchers are not included in the Telegraphers' Agreement but have their own separate agreement with Carrier, and have their own representation.

The record further shows that on December 9, 1953, Carrier proposed to the Telegraphers that a conference be arranged between the Carrier, the Dispatchers and the Telegraphers, to discuss the advent of CTC machine operation on this Carrier. Such discussion was declined by the Telegraphers, as the Telegraphers were interested only in the provisions of their own agreement with Carrier, and took the position that no purpose would be accomplished by such a proposed conference.

We conclude that Carrier has violated the provisions of the agreement by assigning the work of CTC Machine Operators to employes of a craft not covered by the agreement. The record is clear that at the time the CTC Operator classification was negotiated into the Scope Rule and on May 15, 1954, the Dispatchers' agreement contained no such provision, when the CTC machine was put into operation.

All the cases cited to us by Carrier are distinguishable from the docket before us. In such cases this Board has held to the principle that the work required in operating CTC machines was properly that belonging to Dispatchers. Such conclusions are based upon the premise that in those cases cited, the Telegraphers do not have the exclusive right to such positions, but in no case have we found a situation existing such as we have here before us where the Telegraphers have the operation of CTC machines in their Scope Rule, and no such classification is present in the Dispatchers' agreement.

Carrier must asume its responsibility under its agreements, the same as the Organization is required to assume its responsibility under the agreements it makes. The Organization has assumed the burden of proof here, and quite properly has shown that the work required by CTC operators was negotiated into their agreement some years before Centralized Traffic Control became a reality and was not in operation on this railroad at the time. This being so we cannot consider the theory of "custom and practice," as was the determining factor in many of the cases cited.

Carrier has raised the question that in the event of a sustaining award in this case by the Board, that the rights of employes under the Dispatchers' Agreement would be adversely affected, and requests that in such event this cause be remanded for further consideration, and, further, the Dispatchers' organization be notified and be given an opportunity to appear here and enter this cause and protect their interests, if any, under this dispute.

We are of the opinion that such question raised by the Carrier is not involved here, for the reason we are called upon in the matter before us to determine the issues involved between the parties and the responsibility of Carrier under the provisions of the Telegraphers' Agreement.

We are mindful that this Board has held in numerous awards that claims filed in behalf of unknown claimants should be dismissed, or denied, on the premise that such claims are too vague, indefinite and uncertain, and your Referee agrees with such conclusions. However, in the case before us, we have determined that Carrier has violated the agreement and should respond by paying such employes as can be properly identified by a check of its

records by the parties for such period of time subsequent to May 15, 1954, as may be developed by such check by the parties.

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 Employe involved in this dispute are respectively carrier and employe 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 provisions of the Agreement were violated by Carrier.

AWARD

Claim sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April, 1959.

DISSENT TO AWARD NO. 8773, DOCKET TE-8373

This Award is in serious error.

(1). In the fifth paragraph of the Opinion, it is held:

> "We conclude that Carrier has violated the provisions of the agreement by assigning the work of CTC Machine Operators to employes of a craft not covered by the agreement. The record is clear that at the time the CTC Operator classification was negotiated into the Scope Rule and on May 15, 1954, **the Dispatchers' agreement contained no such provision, when the CTC Machine was put into operation.**" (Emphasis added.)

The above-quoted paragraph of the Opinion clearly indicates that consideration was given to the agreement between the American Train Dispatchers Association and this Carrier, without the Division having extended notice of the pending hearing on this dispute to the Association, as urged by the Carrier Members and the Carrier, in order to afford that Association an opportunity to appear at said hearing in protection of its interests. The United States District Court have uniformly held that awards rendered without regard to the mandatory provision of Section 3, First (j), of the Railway Labor Act which requires due notice to all involved parties, are illegal and void. See **Third Division Awards 6812** (Robertson), **8050** (Beatty), and **8022** (Guthrie), and others.

(2). The second error is found in the misinterpretation of the agreement between the Association and the Carrier. Careful analysis of the contents of

the Scope Rule, Article 1 (b), second paragraph, together with the meaning and intent of the words found therein, clearly demonstrates the rights conferred on Train Dispatchers to operate CTC panel boards when such boards are located in Train Dispatchers' Offices.

The current agreement between the Association and this Carrier is effective September 1, 1949. The second paragraph of Article 1 (b) (Scope) stipulates:

> "The terms 'Trick Train Dispatcher', 'Relief Train Dispatcher', and 'Extra Train Dispatcher' shall include positions in which it is the duty of incumbents to be primarily responsible for the movement of trains by train orders, **or otherwise**; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work." (Emphasis added.)

An agreement between the Association and this Carrier, effective **April 1, 1942**, contains the same second paragraph in Article 1, Section (b). The rule is identical, word for word. The agreement effective **April 1, 1942**, contains the following Understandings:

> "UNDERSTANDINGS: It is mutually agreed and understood that:
>
> > "1. Since the above Sections (a) and (b) are predicated on existing Orders or Regulations, pertaining thereto, of the Interstate Commerce Commission, the wording and intent of said Sections (a) and (b) shall be subject to change to conform to any changes made in such Orders or Regulations by the Commission pursuant to the authority conferred upon it by Section I, Fifth, Railway Labor Act, as amended, which changes might affect the Train Dispatcher Class or Group.
> >
> > * * * * *"

The same Understandings and agreement appear word for word, as quoted above, in the current agreement between the Association and this Carrier.

The Interstate Commerce Commission defined the duties of a Train Dispatcher as follows:

> "Train Dispatcher
>
> "The above class includes positions in which the duties of incumbents **are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train orders; to keep necessary records incident thereto; and to perform related work.**" (Emphasis added.)
>
> (Award 6379, p. 1910, bound volume 61)

It will be noted that the second paragraph of Article 1 (b) of the agreement effective **April 1, 1942**, and the second paragraph of Article 1 (b) of the current agreement effective **September 1, 1949**, are identical, word for word, with the existing Orders or Regulations of the Interstate Commerce Commission which defined the duties of the incumbents of position of Train

Dispatcher. The above was directed to the attention of the Referee, to no avail.

Also directed to the attention of the Referee were the Interstate Commerce Commission's Orders or Regulations defining Centralized Traffic Control as follows:

> "A term applied to a system of railroad operation by means of which the movement of trains over routes and through blocks on a designated section of track or tracks is directed by signals controlled from a designated point without requiring the use of train orders and without superiority of trains."
>
> (Award 4452, p. 288, bound volume 42)

Analysis of the language contained in the Interstate Commerce Commission's Orders or Regulations and copied and adopted verbatim in Article 1 (b), second paragraph, of the agreement effective April 1, 1942, and subsequent agreements, readily discloses the Article confers upon Train Dispatchers the right to operate the CTC panel board, when said board is located in the Train Dispatchers' Offices.

The above provisions of the definition of a Train Dispatcher's duties read, in part, as follows:

> "* * * primarily responsible for the movement of trains by train orders, **or otherwise**; * * *.' (Emphasis added.)

Train orders not being necessary in CTC territory, the word "otherwise" In the Train Dispatchers' Agreement (second paragraph, Article 1 (b) (Scope)) clearly confers upon Train Dispatchers the right to handle the movement of trains by CTC when such machines are located in train dispatching offices. This CTC machine was located in a train dispatching office.

The movement of trains controlled by a dispatcher cannot be broken into small segments or made a dual responsibility because of the safety hazard involved and for which, under the Association's agreeement, the Dispatcher is primarily responsible. To this may be added the burden of additional and unnecessary positions being created and the expenses attached thereto all contrary to the public interest. The Majority has ignored the obvious effect of this Award by merely stating:

> "We are of the opinion that such question raised by the Carrier is not involved here, for the reason we are called upon in the matter before us to determine the issues involved between the parties and the responsibility of Carrier under the provisions of the Telegraphers' Agreement."

The Majority Opinion clearly indicates that the agreement between the Train Dispatchers Association and the Carrier was considered by the Referee for one purpose only, i.e., to determine if, as requested by the Carrier and the Carrier Members, notice should be extended to the Association of the dispute filed by the Telegraphers with the Carrier, and afford the Association an opportunity to be heard. To reach such a determination required a most searching analysis of the Association's agreement. The conclusions reached by the Majority herein, however, show an unrealistic approach to the subject matter in failing to reach a conclusion that the American Train Dispatchers Association has an interest; if that had been done, it would have been necessary either to extend notice or deny the claim. A denial Award was in order for the reason that the agreement with the Association antedates, by five

years, the Agreement with the Telegraphers' Organization of 1947 and these Telegraphers have never dispatched trains by use of CTC machines. Proper consideration of the intent and purpose of the words "or otherwise," as found in the Association's Agreement of April 1, 1942, demanded a denial in this dispute. The sustaining of the claim shows a lack of comprehension of the meaning of words, which is one of the paramount duties in the interpretation of rules.

In addition to the foregoing errors, the majority's conclusion on the merits are also manifestly in error as they are predicated on an erroneous theory of contract construction.

The Majority has accepted the Organization contention that the mere listing of the job classification "CTC Machine Operator" in the Telegraphers' Scope Rule by itself grants Telegraphers an exclusive right to operate all CTC Machines on this Carrier's property.

This erroneous reasoning has been rejected many times by this Division, e.g., see **Awards 7310** (Rader), **8076** (Bailer), **8083** (Beatty), and, in particular, **6758** (Parker).

As these representative Awards correctly state, in order to properly determine whether the occupants of the positions listed in the Scope Rule have an exclusive right to perform work, recourse must be made to past practice or other indication of their understanding.

The record shows that at the time of negotiating this present Agreement (1947) no CTC machines existed on this Carrier's property, thus there was no past practice to show that Telegraphers had gained an exclusive right to operate all CTC machines by rule, or otherwise. But the record contained other evidence of the intent of the parties which the Majority failed to apply.

The Majority has also failed to recognize that any service of a Telegrapher in the dispatching of trains is limited to that of the intermediary only when the dispatching of trains is handled through a third party.

Finally, we must also dissent from the total disregard by the Majority of their obligation to dismiss the monetary feature of this claim. The Majority, after stating that they are in agreement with our Awards which have dismissed or denied claims that were filed in behalf of unnamed Claimants, e.g., see **Award 6290** by same Majority, rules contrary thereto and orders Carrier to develop the claim of this Organization, in opposition to the holdings of this Board that neither we nor the Carrier need develop claims for the Employes.

An Award such as this one increases the difficulties confronting Carriers in their struggle for existence.

For the foregoing reasons, among others, we dissent.

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