Award No. 9209
Docket No. TE-8066

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY—Eastern Lines

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway System that:

1. The Carrier violated the Agreement between the parties when, on or about November 11, 1954, it removed the work of operating switches and signals governing the movement of trains at and between NR Junction, Emporia, Kansas, and Lebo, Kansas, from employes covered by the Telegraphers' Agreement and delegated the performance of this work to employes not so covered;

2. The Carrier shall be required to restore said work to the scope of the Telegraphers' Agreement to be performed by employes covered thereby; and

3. For each and every eight hour shift that the work previously performed by employes under the agreement at NR Junction is performed by means of CTC equipment operated by train dispatchers at Emporia, Kansas, the Carrier shall be required to compensate the senior idle extra telegraph service employe in an amount equivalent to a day's pay at the rate applicable to the position at NR Junction, and, if there be no idle extra telegraphers then, the Carrier shall compensate the senior telegraph service employe or employes idle on a rest day in an amount equivalent to a day's pay at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: An Agreement, bearing effective date of June 1, 1951, between the parties is in evidence.

For many years the Carrier maintained a tower at NR Junction, Emporia, Kansas, situated 1.1 miles east of its passenger station at Emporia at a point where the MK&T Railway crosses the Santa Fe main line tracks and where the Carrier's double track Second District and First District single track main line meet.

(2) By reason of the Employes represented by the American Train Dispatchers Association having rights under their contract with this Carrier, which may be affected by any decision made by the Board in the above dispute, that Organization becomes an interested party which insofar as the Carrier is informed has neither been given due notice of the claim filed with the Board, nor an opportunity to appear and be heard.

(3) The Employes have no monopoly right to do the kind of work which is here in dispute.

(4) The question at issue constitutes a jurisdictional dispute the determination of which does not rest with the Board.

(5) The Scope rule cited by the Employes in support of its position does not lend any support to the claim.

(6) The Board has decided that under the circumstances here existent the Carrier has the undisputed right to transfer work from the Telegraphers' Agreement to employes subject to the Dispatchers' Agreement.

(7) The Board is not authorized to establish rules and is therefore not competent to legally determine this dispute.

In conclusion, the Carrier respectfully reasserts that the Employes' claim in the instant dispute is entirely without support under the governing agreement rules in effect between the parties hereto and should, for the reasons previously expressed herein, be denied in its entirety.

The Carrier is uninformed as to the argument the Employes will advance in their ex parte submission, and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the organization's ex parte submission or any subsequent oral arguments or brief submitted by the petitioning organization in this dispute.

All that is contained herein is either known or available to the Employes or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Claims are made here by the Telegraphers' Organization on behalf of employes, on the allegation that Carrier has violated the effective Agreement between the parties, when on November 11, 1954, and subsequent dates, Carrier removed the work of operating switches and signals governing movement of trains between NR Junction, Emporia and Lebo, Kansas, from employes herein, and delegated such work to employes of another craft, designated as Train Dispatchers.

It is conceded that the work of operating switches and signals relevant to movement of trains was controlled by Telegraphers, that on March 1, 1955, the installation was completed by Carrier, and since that time all signals and train control operations involved here since March 1, 1955, have been under control of Train Dispatchers, operating a control machine located in the Dispatcher's office at Emporia.

From the record and facts before us, it appears that a jurisdictional question is involved. There is nothing in the record before us to show that the Dispatchers organization have been given due notice that this case is pending. There is evidence here, that in the event a sustaining award should be adopted, that the rights of employes covered by the agreement between Carrier and the American Association of Train Dispatchers, may or may not be adversely affected by such an award.

The record before us does not sufficiently justify an award finding that work here involved belongs exclusively to the Telegraphers, nor does it belong to the Dispatchers, to the exclusion of the Telegraphers. This Division does not have the authority to make such an award.

In a recent docket, this Division held in Award No. 9062, covering the same property and a similarity of facts, that the operations here do not constitute CTC operations as alleged.

The claims here before us cannot be properly determined in view of the record here. The matter should be referred to the interested parties for conference and negotiation. In reference to the Dispatchers, proper notice should be given to the American Association of Train Dispatchers, and it be given an opportunity to assert its rights herein, if any. In the event of disagreement between the parties, the matter should be referred to the National Mediation Board for final disposition, as suggested by Award No. 4452.

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; and

That the National Railroad Adjustment Board, Third Division, does not have jurisdiction over the issues involved.

AWARD

Claim remanded as set out in the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1960.

DISSENT TO AWARD 9209, DOCKET TE-8066.

Award 9209 represents utter failure of this Board to perform its statutory duty, and thus is not only erroneous but very likely to foment additional disputes, the very opposite result from that sought by Congress when it established the Adjustment Board.

The record shows that operation of the switches and signals in the territory between N. R. Junction, Emporia and Lebo, Kansas had been performed by employes covered by the Telegraphers' Agreement for many years. Some of these switches and signals had been operated by means of remote control devices for at least ten years before the Carrier took the action complained of.

Operation of switches and signals by means of levers from a central point has been recognized as work properly assigned to employes subject to the scope of the Telegraphers' Agreement; by virtue of the classifications "Towermen" and "Levermen" which are listed in the scope rule without exception or modification of any kind.

Such enumeration of "Towermen" and "Levermen", together with the fact that work of which those terms are descriptive has always been performed by employes of the telegrapher class and craft, has been authoritatively held to constitute a binding obligation upon the Carrier to continue to assign such work to those employes. The correctness of this observation is borne out by Award 553, which settled this very point, in a dispute between these same parties, as follows:

> ". . . the fact remains and is in evidence that the operation of the appliances and levers in the tower was work of a class definitely covered by the Telegraphers' Schedule, and in arranging for or assisting such work to employes of another class and not represented in the Telegraphers' agreement without proper conference and agreement the Carrier violated the terms of the existing schedule."

Some seven years after this interpretation of the parties' agreement was rendered, the Carrier installed a "remote control machine" at Lebo, and properly assigned its operation to telegraphers. Later, this machine was moved to N. R. Junction and its operation assigned to the telegraphers there who were already operating switches and signals by means of levers from a central point, both locally, by means of a mechanical interlocking machine, and at the intermediate station of Wiggam by remote control.

At the time the current agreement (Effective June 1, 1951) was adopted all of the switches and signals, operated by means of levers, in the territory here involved, were being controlled by employes of the classifications "Towermen" or "Levermen" covered by the Telegraphers' Agreement.

The parties readopted the two scope rule classifications without change, thus readopting the interpretation placed thereon by Award 553.

The Carrier continued to observe the right of the telegraphers to operate these switches and signals for another three and one-half years. Then, without conference or agreement with the telegraphers, the Carrier abolished all of the telegraphers' positions, substituted "a similar, but larger, machine, for the equipment at N. R. Junction, but placed it in the dispatchers' office at Emporia, and thereafter required the dispatchers, employes not subject to the telegraphers' agreement, to perform the work—the very same work formerly and for a long period of time performed solely by telegraphers.

Against this factual background the Telegraphers filed a claim, alleging infringement upon their rights and requesting that the work be restored to those employes who held a contractual right to perform it.

The Carrier declined this claim and in defense of its denial urged this Board to apply and follow the theory responsible for Awards like 4452 and 4768, for example. This theory is that a method of train operation known as Centralized Traffic Control, was not contemplated by the parties when their agreement was negotiated and that, therefore the classifications of "Towermen" and Leverman" are not to be taken as an expression of intent to have "Centralized Traffic Control" levers operated by employes of those classifications. These awards envision a dispute involving the making of an agreement to cover the specialized CTC work and thus hold that the Mediation Board must be the tribunal with jurisdiction of such a dispute. (I will not here explore the fallacies of such a theory.)

Meanwhile, the Carrier's employes of the Signalmen's craft had filed a claim involving this same territory lying between Emporia and Lebo, Kansas, and involving the same "new machine" which had been installed in the dispatchers' office as a substitute for the equipment in N. R. Junction tower. That claim was based on a rule in the Signalmen's agreement providing additional payment for maintainers whose territory includes a continuous CTC installation. The Carrier declined this claim, and it eventually reached this Board where it was docketed as SG-8421 and was being considered by another referee at the same time Referee McMahon was considering Docket TE-8066.

In Docket SG-8421 the Carrier defended its denial of the claim on a well documented contention that the installation of the "new machine" and its controlled switch and signal equipment did not constitute a CTC installation at all, but was merely the same "remote control" that had previously existed and had been operated by the telegraphers.

This Board, in Award 9062, sustained the position of the Carrier, holding explicitly that installation of the equipment in question does not constitute a CTC installation.

Having thus found, in Docket SG-8421, that the installation was not C.T.C., this Board should have had no difficulty with Docket TE-8066. We should easily have found that awards 4452, 4768, and other similar awards, relied on by the Carrier, have no application here because they deal solely with cases where C.T.C. installations were found to have been involved.

With all this data before him, the Referee, however, chose to "pass the buck" to someone else. He said "it appears that a jurisdictional question is involved." He noted that the dispatchers' organization had not been given notice that this case was pending. Then, instead of taking the usual action of holding the case in abeyance and giving the Dispatchers notice—as was done in Award 9082, same referee—the Referee equivocated. First, he decided that "The record before us does not sufficiently justify an award finding that work here involved belongs exclusively to the Telegraphers". This in spite of the agreement, the facts and Award 553. Then he notes Award 9062, but carefully avoids stating that the dispute there decided involved the precise territory, equipment, and question of fact controlling of the dispute in TE-8066.

The final paragraph of the Opinion clearly demonstrates the Referee's confused groping for some way to avoid a sustaining award which was positively indicated by the facts of record, the Agreement, and Award 9062.

In that paragraph the Referee first says:

> "The claims here before us cannot be properly determined in view of the record here."

No reason—just a statement. The record was unusually complete, and replete with facts indicating the complete validity of the claim.

Then, came this gem of impartial wisdom:

> "The matter should be referred to the interested parties for conference and negotiation."

The matter came to us from "the interested parties" because they could not dispose of their differences in "conference and negotiation". They came to us because this is the proper place for such disputes to be referred. But we blithely ignore the duty imposed upon us by Congress and say the matter should be referred to whence it came.

The Referee then once more says that notice should be given to the dispatchers, with an opportunity to assert its rights, "if any". He then makes the final effort to wash his hands of the entire case by declaring that:

> "In the event of disagreement between the parties, the matter should be referred to the National Mediation Board for final disposition, as suggested by Award 4452."

Thus is revealed the whole pattern of erroneous thinking that led to this absurd award. Award 4452, as we have noted above, dealt with a situation where it was found that a true C.T.C. installation was involved. Here we were dealing with exactly the opposite: A situation where this same Board had found that the installation involved was not C.T.C.

The question involved in this docket was whether or not the operation of switches and signals by means of levers from a central point, using equipment which this Board itself found was not a CTC installation, belongs to telegraphers who not only had performed the work for a period in excess of ten years, but also had been adjudged by this Board as the type of work reserved exclusively to them by the very same scope rule classifications here involved.

The Mediation Board has no power to resolve such questions, and has so stated many times. However, because a referee apparently did not have the courage to render an award which undoubtedly would have been unpopular with the Carrier Members, the Employes are faced with the necessity of making a futile, expensive and time consuming appeal to the National Mediation Board for a decision which the majority in Award 9209 says it should make.

I strongly objected to adoption of such an erroneous award; I voted against its adoption; and I take this means of recording my dissent thereto.

J. W. Whitehouse,
Labor Member.