Award No. 10366
Docket No. TE-9496

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Raymond E. McGrath, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad that:

(1) Carrier violated the agreement between the parties hereto when on February 14, 1956, it required or permitted employes not within the scope of the said agreement to block trains at or near 104th Street, Washington Heights, Illinois;

(2) Carrier shall now be required to pay D. F. Pryor a day's pay of eight hours at $1.95 per hour.

EMPLOYES' STATEMENT OF CLAIM: There is in evidence an agreement by and between the parties hereto, bearing an effective date of August 1, 1947 as to rules and working conditions, and of September 1, 1947, as to rates of pay, all applicable provisions of which, as amended, are invoked.

The various rules or provisions of the prevailing agreement will be quoted and discussed, as Employes' Statement of Position is developed.

Washington Heights is in Chicago, Illinois, suburban area, at approximately 103rd to 105th Streets. In the territory involved, Carrier maintains three, parallel, main line tracks, designated as tracks 3, 4 and 5. There is a cross-over between 104th and 105th Streets, which permits trains to be crossed over from track 3 to track 4, and from track 4 to track 5, by means of hand-thrown switches. Immediately adjacent to the cross-over, a pole-box telephone is located, permitting telephone communication with Train Directors at the Gresham interlocker, near 87th Street. One of the main lines of the Pennsylvania Railroad (Panhandle Branch) crosses Carrier's tracks between 103rd and 104th Streets. The rail crossing, at the intersection of Carrier's track 3 with the Pennsylvania main line, was taken out of service for repairs

In that case, the Statement of Claim read, in part, as follows:

"That the Carrier violated and continues to violate the scope rule of the telegraphers' agreement when commencing November 24, 1947, it permitted or required employees not covered by said agreement at B Avenue, Cedar Rapids, Iowa, to perform communications service and block operation of trains by the use of the telephone, which is work covered by the telegraphers' agreement."

In denying the claim in Award 5023, Referee Francis J. Robertson had the following to say:

"It is clear that the telephone conversations between the switchtenders and the towermen at 9th Street were for the purpose of obtaining and transmitting information concerning the movement of trains in and out of the Cedar Rapids Yards. This exchange of information was necessary to a determination with respect to permitting such trains to move out of or into the yards so that movements would not result in obstruction of intersections along 4th Street. Under timetable instructions, authority with respect to the movement of trains was reposed in the towerman. It was agreed by the parties that prior to the establishment of the switchtender positions, employes of the carrier, other than those covered by the telegraphers' agreement were communicating with the towerman at 9th Avenue by telephone located in the yard office, asking information from them as to whether they should allow trains to proceed out of the yard and securing information as to incoming trains. We believe that this Board's Award 700 (without a referee) is authority for the proposition that such use of the telephone does not encroach upon the jurisdiction of the telegrapher. In this respect, Award 1396 is also pertinent. Essentially, the use of the telephone by the switchtenders after November 24, 1947 was in lieu of the same use as that made by the yard employees prior thereto.

In view of the above mentioned factors, it seems apparent that the claim cannot be sustained."

In view of the findings in the above referred to award, it is our position that we are not in violation of the Telegraphers' Agreement in the instant claim and request your Board to so hold.

For the above reasons, we respectfully request your Board to deny the claim of the employes.

It is hereby affirmed that all of the foregoing is, in substance, known to the organization's representatives.

OPINION OF BOARD: This claim arose out of the necessity of making repairs to a railroad crossing at Washington Heights (Chicago) where Carrier's rails cross those of the Pennsylvania Railroad. The repairs involved Carriers Track No. 3. This track was out of service from 10:55 A.M. to 4:45 P.M. on February 14, 1956. Carrier's Tracks No. 4 and No. 5 at this point were in service during the time shown.

At Mileport 12, Pole 4, there are crossover tracks permitting train movements from Tracks No. 3 to No. 4 to No. 5. The switches permitting the crossovers are manually operated.

During the period of time when Track No. 3 was out of service at the railroad crossing, Carrier elected to station a switch-tender at the crossover to manipulate the hand thrown switches. Immediately adjacent to the crossover, a pole box telephone is located, permitting telephone communication with Train Director at the Gresham interlocker near 87th Street. The switch-tender used the pole telephone and talked to the Gresham Train Director and requested instructions as to what tracks to put Trains No. 224, No. 506, and No. 226 on, as they arrived at the switch-tenders location. The Gresham Tower Director, instructed him in each instance, to head No. 224 on Track No. 4, No. 506 on Track No. 5, and No. 226 on Track No. 5.

It is only the telephoning phase of this operation that gives rise to the instant claim. The Employes do not claim that the work of operating the hand thrown switches by the switch-tender nor his giving hand signals to the three trains are part of this complaint. Nor does this claim involve the issuance of Train Order No. 590.

The issue is whether the switch-tender by the use of the telephone performed work which is covered exclusively by the Telegrapher's Agreement and which should have been done by a telegrapher.

In determining the issue here involved, the burden of proof rests upon the Petitioner to prove by competent evidence or by former decisions on the same factual situation by this Board, that Claimant had the exclusive right to handle the particular telephone messages involved in this complaint. See Awards No. 6359, 7330, 8065, 9261 and many others. We do not think that the Claimant in this case on the basis of the record before us has sustained this burden of proof.

There are so many awards of this Board on the subject of the telephone rights of the telegraphers that a few well recognized principals have evolved. Many of these have been stated extremely well in Award No. 4516 by Referee Carter. Parts of this award are as follows:

> ". . . This Board has sought to follow the communication work of the Morse code operator into the advanced methods of communication and preserve for him the work which traditionally belonged to him.
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> ". . . But it was readily apparent that the use of the telephone was so general that every use of the telephone was not contemplated or intended as telegraphers' work. . . .
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> * * * * *
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> ". . . The reservation of work by telephone includes only that which telegraphers formerly performed by telegraph, and nothing more. . . ."

We do not think that the above case qualifies as a proper complaint with reference to the above basic principles. The use of the telephone in our case was in lieu of a personal trip or messenger service. It is not in lieu of any work formerly performed by a telegrapher.

Award No. 5023 decided by Referee Francis Robertson and relied on by the Carrier covers a very similar factual situation but not exactly. In Award 5023 a situation within yard limits was involved and our record does

not disclose whether the location of the pole telephone was within a yard or not.

All that was done in our case was that the switch-tender called up the Gresham Tower Director a member of the complaining Organization and asked him how to throw the switch. We do not think that in doing this that he was doing telegraphers work.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1962.