

Award No. 11708
Docket No. TE-10607

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
BANGOR AND AROOSTOOK RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Bangor and Aroostook Railroad, that:

1. The Carrier violated the parties' Agreement at North Maine Junction Yard Office, Maine, when, on October 5, 12 and 19, 1957, it required or permitted employes not covered by the Telegraphers' Agreement to transmit by telephone messages of record to Maine Central Tower located at Hermon Center, Maine, and to the Chief Dispatcher at Portland, Maine.
2. The Carrier shall, because of the violations set forth above, compensate D. F. Ellison, who was entitled to perform the work, a call for each violation in accordance with the call and overtime provisions of the parties' Agreement.
3. The Carrier further violated the parties' Agreement at North Maine Junction, Maine, when, on September 29, October 6, 13, 20 and 27, 1957, train dispatchers at North Maine Junction handled (issued, copied and delivered) train orders at this station where employes covered by the Agreement are employed but failed and refused to pay such employes under the provisions of Article XXXIV paragraph (b).
4. The Carrier shall, because of the violations set forth above, compensate J. C. Chasse, who was entitled to perform the work, a call for each violation in accordance with the call and overtime provisions of Article XVIII as stipulated by Article XXXIV paragraph (b).
5. The Carrier, in addition to the foregoing, violated the parties' Agreement at North Maine Junction, Maine, when, on October 13 and 27, 1957, train dispatchers handled (issued, copied and delivered) train orders at this station where employes covered by the Agreement are employed but failed and refused to pay such employes under the provisions of Article XXXIV paragraph (b).
6. The Carrier shall, because of the violations set forth above, compensate M. E. Willett, entitled to perform the work, a call for each violation in ac-

cordance with the call and overtime provisions of Article XVIII as stipulated by Article XXXIV paragraph (b).

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective May 1, 1946, as revised.

At Page 55 of the effective Agreement are listed the positions at North Maine Junction then in existence. They are:

	Position	Rate Per Hour
No. Me. Jct.	Opr. 1st	\$1.723
No. Me. Jct.	Opr. 2nd	1.699
No. Me. Jct.	Opr. 3rd	1.675
No. Me. Jct.	Towermen (c)	1.555

At the time the violations occurred the record shows that the following positions were maintained at North Maine Junction:

	Position	Rate Per Hour
No. Me. Jct.	Opr. 1st	\$2.098
No. Me. Jct.	Opr. 2nd	2.074
No. Me. Jct.	Opr. 3rd	2.05
No. Me. Jct.	Car Dist'r.	2.1769
No. Me. Jct.	Asst. Car Dist'r.	2.1355
No. Me. Jct.	Operator (Car Dist'rs.)	2.0765

Prior to June 23, 1957, the 1st, 2nd and 3rd shift positions at North Maine Junction were assigned seven days per week. Hours 6:00 A. M. to 2:00 P. M.—2:00 P. M. to 10:00 P. M.—10:00 P. M. to 6:00 A. M. respectively.

Commencing Sunday, June 23, 1957, the Carrier declared the Sunday assignment of the three Operator positions abolished, and shortly thereafter, abolished the Saturday assignment of the third shift Operator's position. Concurrent with the declared abolishment of the Saturday and Sunday assignment of the positions, work attached thereto was assigned to train dispatchers and/or other employees not covered by the Agreement, and in violation thereof.

Claimant D. F. Ellison in his time report dated October 9, 1957, attached as ORT EXHIBIT NO. 1, filed two claims. One for September 14, 1957 reading:

"Claiming 3 hours punitive rate account message handled between Tower MD and Dispr."

and two,

"Claiming 3 hours punitive rate account messages of record handled between Yard Office and Portland Dispr., by New England Telephone, at 1245 A. M. Sunday Oct. 6, 1957."

Claim One was passed and paid. Claim Two, involving the following reports of record, is a part of the subject matter of Item 1, Statement of Claim. The reports:

covered by this agreement and train dispatchers will be permitted to handle train orders, except in cases of emergency.

Paragraphs (b) and (c) of Article XXXIV specify penalty payments when other than train dispatchers and operators copy and deliver train orders.

With more than fifty years of past practice and no protest or time claims filed arising from train dispatchers at Houlton on the Northern Division issuing, copying and delivering train orders direct to crews, Carrier in 1957 blanked the operators' positions in the station at Northern Maine Junction on the Southern Division, 11:00 P.M. Saturday until 11:00 P.M. Sunday, and train dispatchers at Northern Maine Junction issued, copied and delivered train orders in exactly the same manner as was being done at Houlton. Carrier had no alternative but to decline time claims originating at Northern Maine Junction as result of adopting the same practice in effect at Houlton, as Article XXXIV, Paragraph (a), clearly establishes the right of train dispatchers to issue, copy and deliver train orders. It is apparent that after all these years a different interpretation is requested regardless of past practice, time limits, etc.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. Prior to June 23, 1957, the first, second and third shift telegrapher positions were assigned seven days a week. Effective June 23, 1957, Carrier abolished the three Sunday positions. Shortly thereafter Carrier abolished the third shift position on Saturday. Work on the third shift on Saturday and all of Sunday was assigned to train dispatchers and was sometimes performed by other employees not covered by the Agreement.

Petitioner alleges that on October 5, 12 and 19, 1957 the Yardmaster "transmitted by telephone messages of record to Maine Central Tower located at Hermon Center Maine, and to the Chief Dispatcher at Portland, Maine." On September 29, October 6, 13, 20 and 27, 1957, train dispatchers handled train orders in violation of Article XXXIV paragraph (b).

Article XXXIV (a) and (b) of the Agreement reads as follows:

"(a) No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders except in cases of emergency.

(b) If train orders are handled at stations or locations where an employe covered by his agreement is employed but not on duty, the employe, if available, or can be promptly located, will be called to perform such duties and paid under the provisions of Article XVIII; if available and not called, the employe will be compensated as if he had been called."

Paragraph (a) of Article XXXIV is clear and unambiguous. Train dispatchers, as well as employees covered by the Agreement, are permitted to handle train orders. Paragraph (b) of Article XXXIV may not be considered alone. It does not stand out as an isolated undertaking. It must be read and considered as part of the agreement, particularly in relation to paragraph (a). Paragraph (b) does not modify nor limit the rights and intent of paragraph (a). It may be considered only in relation to and upon the conditions provided in paragraph (a). In view of the clear meaning and intent of para-

graph (a) we are not permitted to give it the interpretation stressed by Petitioner. It is well known to the parties that where the contract language is clear and unambiguous we may not modify it to give it another meaning. To do so would place in jeopardy the sanctity of contracts and the process of free collective bargaining. In view of this holding we are obliged to conclude that there is no merit to the claim arising out of messages handled by train dispatchers on September 29, October 6, 13, 20 and 27, 1957. This refers specifically to items 3, 4, 5 and 6 of Petitioner's claim.

The messages telephoned by the Yardmaster to the Chief Dispatcher were not train orders and are not, therefore, covered by paragraph (b) of Article XXXIV.

It is a well established principle of this Division that since the Scope Rule of the Agreement does not define the work of the employes, it is necessary to ascertain the historical, traditional and customary practice.

Petitioner alleges that a claim for a similar message telephoned on September 14, 1957 was paid.

The record shows that Carrier "owned and operated a composite telephone circuit for many years which . . . connected the General Administration building in Bangor to the Dispatcher's offices at Houlton and at Northern Maine Junction where Superintendents were also located." Further, "usual telephone conversations, many so called reports and messages of record are telephoned by other than telegraph operators." Carrier recites in detail the operation of its communication system among all of its employes and concludes:

"Carrier contends that when the yardmaster at Northern Maine Junction telephoned the 'ABC' report to the Maine Central at Portland, it was no more than a continuation of the practice that has existed for many years in that employes telephone forms and messages of record without telegraph operators being expected to do this work."

One isolated claim settlement does not establish past practice. The record fails to show by a preponderance of evidence that the transmission of messages by telephone was historically, traditionally and customarily the exclusive work of the telegraphers.

For this reason, we are obliged to conclude that there is no merit to items 1 and 2 of Petitioner's claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of September, 1963.