

**Award No. 11720
Docket No. TE-10536**

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad — Western District, The Cleveland Union Terminals Company, that:

CLAIM NO. 1

1. Starting January 30, 1957 and continuing thereafter, the Carrier violated Articles 1, 22, 24, and 45 of the Agreement between the parties when it required and/or permitted the Conductor of Train C-1 to perform the work exclusively covered by the Telegraphers' Agreement in handling verbal train orders which give his train the right to occupy the north controlled siding while he sets out, switches, or picks up cars at Wickliffe, particularly at the Lubrizol Plant.

2. Carrier be required to pay the Agent-Operator at Wickliffe and his successors an amount equal to what he would have been paid under the Call Rule, Article 5, of the Agreement between the parties had he been called to perform the work. A joint check of the Carrier's records to be made to determine proper amounts due.

CLAIM NO. 2

1. Starting on April 18, 1957 and continuing thereafter, the Carrier violated Articles 1, 24 and 45 of the Agreement between the parties when it removed from the Wickliffe, Ohio station the work of waybilling lcl freight shipments and other work incidental thereto, including preparation of freight bills for lcl freight shipments, which work is being performed by employees not covered by the Telegraphers' Agreement at Cleveland, Ohio.

2. Carrier be required to pay the Agent-Operator at Wickliffe and his successors an amount equal to two (2) hours at the time and one-half rate in addition to the amounts claimed in Claim No. 1 above, for each day the Agent-Operator is deprived of the work.

claimant in such violations before requesting that the carrier assist them in searching their records to find the proper claimant."

Fourth Division Award No. 1214 with Referee William H. Coburn denied the claim of the Railroad Yardmasters of America on the C&NW Railway Company upon the interpretation of Claim and Grievances rule. The Opinion of the Board reads in part as follows:

"Both Petitioner and Respondent recognize that the question of whether this is a valid claim depends upon the interpretation given the language of Rule 20(a) of the controlling agreement.

The particular language subject to interpretation is: 'All claims or grievances must be presented in writing by or on behalf of the employe involved, . . .' because the question to be resolved is whether these words require the claimant to be designated by name.

We agree with the findings, conclusions and interpretations made by the foregoing authorities as applied to the question confronting us. We hold, therefore, that where the contract provides that claims must be presented 'by or on behalf of the employe involved', a claim filed on behalf of an unnamed individual is so lacking in specificity as to be barred by contract."

It is the Carrier's opinion that the several Awards cited here, when duly associated with the relevant facts set forth elsewhere in this ex-parte submission, conclusively refute the claim of the Organization in this docket.

CONCLUSION:

The Carrier has shown that:

1. There was no violation of rules, and the rules cited by the Organization do not support the claim;
2. Awards cited by the Carrier support the Carrier's position: Carrier urges that claims No. 1 and 2 be denied in their entirety.

All evidence and data set forth herein have been presented to the employes and considered by the parties in conference.

OPINION OF BOARD: The matter in contention before this Board consists of two separate claims in which the issues involved are not identical, the only point of similarity, practically, being that the Claimant, the Agent Telegrapher at Wickliffe, Ohio, is the same in each of these Claims. With the view in mind of avoiding any confusion and in the interest of clarity, the two claims will be considered independently of one another.

CLAIM NO. 1

Prior to the advent of C.T.C. in the area of Wickliffe, Ohio, there were four main tracks which were designated and used as two eastward tracks and two westward tracks with each pair separated. With the installation of C.T.C., the operation was changed. Inasmuch as the vast majority of movements in C.T.C. territory are made solely on signal indication without regard for superiority of trains by class or direction, the two center tracks

are, primarily, the high speed main tracks and the two outside tracks designated as "controlled sidings". The "controlled sidings" are normally used on signal indication the same as the two middle tracks. However to use any of the four tracks for purposes other than the usual and normal movement, permission of the train dispatcher located at Erie, Pennsylvania, by means other than signal indication is required. In the case of the work train, C-1 at Wickliffe, a direction from the dispatcher is necessary giving the right to occupy and use the track between specified locations and within specified time limits.

It is the contention of the Claimant that on January 30, 1957, the following train orders (verbal) were issued by the Train Dispatcher and received by Conductor Simmons of Train C-1 at Wickliffe:

"You have the right to use the North Controlled Siding at Wickliffe from 10:30 PM to 11:59 PM between FE and BR."

"You have the right to use the North Controlled Siding from 11:59 PM to 3:00 AM between FE and BR."

It is Claimant's further contention that similar train orders were given at dates subsequent to that time; that these orders were received by employees not covered by the Telegraphers' Agreement and the conduct of the Carrier was in violation of Article 1 (the Scope Rule) and Article 22 (the Standard Train Order Rules) of the Agreement.

It is the position of the Carrier that all trains in this area operate under Centralized Traffic Control (C.T.C.) rules, that the operating rules of the Carrier do not require the use of train orders in C.T.C. territory; that Article 22 has no application to the instant case as train orders were not involved. Carrier maintains that in the vicinity of Wickliffe, Carrier serves a large industry known as the Lubrizol Company where switching is required; that if the time required to do the switching is known or can be closely estimated, the Train Dispatcher can and does instruct the crew through its Conductor by telephone as to the time they may use on the various tracks at Lubrizol; that this may require frequent conversations. Carrier further asserts that the trainmen receiving such authorization are required by the rules to repeat it but are not required to copy it as they would a train order; that the Train Dispatcher does not reduce his instruction to writing as he is required to do in issuing train orders but simply places a "token" or marker on the switches at the siding and notes the "time". It is Carrier's contention that these communications between the Dispatcher and the crew are neither train orders nor "communications of record."

It is Carrier's further contention that this was not work exclusively reserved to the Claimant under the Scope Rule — that the Scope Rule of the Agreement on this property has never been recognized as prohibiting telephone conversations between Train Dispatchers and Train Service employees concerning train movements which are under the direct control of Train Dispatchers and, even prior to the installation of C.T.C., did not handle any communications with respect to the switch run at Lubrizol Plant. Carrier contends that there has been no violation of the Agreement.

In Award No. 1 Joint BRT — ORT, Docket Case No. 24, Special Board of Adjustment No. 100, Referee Douglass, it was held that a telephone communication between a Conductor and a Dispatcher with respect to work to be performed by the crew is of a temporary nature, useful only on that

day and, even, though recorded on a form by the Dispatcher is not such that it should be considered a "communication of record".

We find the following comment in this Award, as follows:

"FINDINGS: . . . The allegation of The Order of Railroad Telegraphers is that the work of taking 'track and time limits' over the telephone by the conductor direct from the dispatcher is communications of record and is work exclusively belonging to the telegraphers under the scope rule of the Telegraphers' Agreement.

* * * * *

". . . The National Railroad Adjustment Board has many times passed upon questions involving what are the duties that are exclusively the right of telegraphers to perform upon railroads, but so far as we know there has been no Award involving the question of track and time limits as posed here Track and time limits, as shown in the facts involved in this case, are where, as in this case, the conductor in charge of Work Train (Engine 776) was operating in connection with a pile driver at a trestle approximately two miles south of Lewisville, Arkansas on the dates in question. The work train went on duty each morning and tied up each night at Lewisville. This is all within CTC territory where operation under train orders has been dispensed with and all operations were had under signal indication. The facts disclose that a telephone connection with the dispatcher's office was maintained at each switch off the main line and, in addition thereto, a portable telephone had been established at the trestle where the pile driver was working. Each morning before going to work it was necessary for the conductor to pick up the phone at the Lewisville switch, which was connected directly to the dispatchers' office, and ascertain when he could enter the main track to go down to the trestle for the pile driver to commence work and how much time he could so occupy the main line before being required to clear the main line for the operation of other trains through that territory. In the same manner at other times during the day he would use the telephone, either at the Lewisville switch or the portable telephone at the trestle, both of which were direct lines connected to the dispatchers' office, to inquire of the dispatcher and receive instructions from the dispatcher for additional track and time limits. The Organization here contends that getting such information from the dispatcher by the conductor was communications of record having to do with the movement of a train and under the scope rule and provisions of the Telegraphers' Agreement with this carrier was exclusively the work of telegraphers and that a telegrapher should have been used to do this work that was performed by the conductor, or as here claimed the senior idle telegrapher of that seniority district should be paid for not having been used to perform this work.

"We are therefore posed with the first question of whether or not this was communications of record. The organization contends and it is not denied that the Uniform Code of Operating Rules in effect on this property provides the exact wording in which track and time limits will be given by the dispatcher and for the purpose of such instructions a form 2200 has been provided the dispatchers in making out such track and time limits. There is no dispute that

the conductor receiving such track and time limits is not required by any rule to copy such rights given him by a track and time limit. In some instances the conductors make some notation of what information the dispatchers gave him on any piece of paper that he might have handy and in other instances no record of any kind is made by such conductor. In the instant case one of the conductors involved testified that each time he made a notation of the dispatchers' instructions on a piece of paper. It was also disclosed in this case that the form 2200 as filled in by the dispatcher when he gives a track and time limit has been retained, but there is no rule or requirement either by law or by company instruction that has been presented to this referee that requires the keeping of any record made in connection therewith as is required by law and company requirements in the case of train orders, clearance cards, block reports and such communications of record as those. The mere fact that a record is made at the time by the dispatcher and not subsequently destroyed does not appear to fall within the category of what is generally recognized as communications of record. Track and time limits notations are of value to no one except during the work day within which they are issued and used and after the expiration of that time, there is no reason for any practical purposes or any requirement of law or operating rules that they be retained. The mere fact that they are retained does not give them the dignity of being communications of record.

"Prior to the installation of Centralized Traffic Control there were no track and time limits as used here and generally in such operation in CTC territory; therefore, this type of work can not be said to have been work previously belonging to telegraphers and is, therefore, not work that was retained to them by their agreements or by past practice and long usage. It is a new type of work such as telegraphers as a craft never before used prior to the installation of CTC operations. We are therefore driven to the conclusion that the handling of track and time limits as shown in this case was not the exclusive work of telegraphers under the terms of their current working agreement."

This language; or much of it, is pertinent to the issues and matter here under consideration and we adopt the conclusions arrived at as applicable to this case.

See also Special Board of Adjustment No. 132 (B & O — ORT) Award Docket 59; New York Central Special Board of Adjustment No. 137, ORT — Docket — Case No. 83; Award 6825 (Shake); Award 11161 (Moore).

For the foregoing reasons Claim No. 1 should be denied.

CLAIM NO. 2

It is the contention of Claimant that for several years it was necessary to use the occupant of the Agent Operator position at Wickliffe on an overtime basis to perform all the work necessary at this station. A position of Clerk was established there in November 1956, but after four months trial the Carrier abolished the Clerk position; that in April 1957 it transferred a portion of the station work at Wickliffe, Ohio, consisting of the waybilling of C.L. shipment, and other work incidental thereto, including the preparation of freight bills for LCL shipments, to Cleveland, Ohio, and assigned

this work to employes not covered by the Telegraphers' Agreement. Petitioner contends that this is work belonging to the Agency at Wickliffe and, therefore, to the one position at this one-man station and, consequently, belongs to Claimant under the Scope Rule of the Agreement.

Carrier admits that the Agent-Telegrapher at Wickliffe was performing this work as part of his total assignment when, in the interest of efficiency and economy, the decision was made to discontinue the billing at Wickliffe, there being no physical handling of freight there by railroad employes. Carrier contends that Clerks' Agreement positions have been assigned at Wickliffe at various times in the past and when that condition existed the work, subject of this dispute, was performed by those employes; Carrier further contends that the Record is silent as to any proof that the Claimant exclusively performed this clerical work or that the work was associated with his position or that he is exclusively entitled to such work.

A dispute, similar to this one in question, was considered and decided on this property, involving the same parties in Special Board of Adjustment, No. 137, Award 73, wherein the Telegrapher's claim was dismissed. It is our opinion that this award is controlling in the present matter and is not erroneous. See also Award 4969 (Carter) ORT vs N.Y.C. (East) and Award 8662 (Guthrie) ORT vs N.Y.C. (East); Award 9344 (Begley); Award 11120 (Dolnick).

Claimant has failed to sustain the burden of proving that this was exclusively the work of this Claimant or of the Agency to which he was assigned.

For the foregoing reasons the Claim is denied.

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;

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

That the Agreement has not been violated.

AWARD

1. Claim No. 1 denied.
2. Claim No. 2 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.