

Award No. 11722
Docket No. TE-10093

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that:

1. The Carrier violated the agreement between the parties when on August 15, 16, 17, and 20, 1956, at Cosgrave, Nevada, Salt Lake Division, it required conductors to "OS" (report) trains direct to the train dispatcher at Sparks, Nevada, who, after recording these train reports, communicated them to an official of the Carrier located at Imlay, Nevada.
2. The Carrier shall now be required to compensate the senior, idle, extra Telegrapher or, if none available, the senior, idle, regularly assigned Telegrapher observing a rest day at the nearest location to Cosgrave, eight hours' compensation at the minimum Telegrapher's rate of pay on the Salt Lake Division for each day the violation occurred.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Cosgrave (the point of the violation) is located at Mile Post 397.0; Imlay is located at Mile Post 384.1; Sparks at Mile Post 246.2. Normally, there is double track (two main tracks) operation between Imlay on the west and Rose Creek on the east, approximately 23 miles with single track (one main track) operation west of Imlay and east of Rose Creek. The instant dispute is concerned with the operation between Cosgrave on the east and Imlay on the west. On the date involved in this claim the eastward main track between these points was ordered out of service in order to facilitate the laying of new rail in this territory. The westward main track between Imlay and Cosgrave was to be used as a single track on these dates. Thus, on August 15, 16, 17, and 20, 1956, during the hours the steel gang was working on the eastward main track, we had an operation between Imlay and

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier operated double track between Imlay on the west and Cosgrave, Nevada, on the east. New rail was being installed on the eastbound track and it was out of service so that the double track was being single tracked on the normally westbound track. Carrier stationed 2 conductors at Cosgrave who performed block operator work in connection with the abnormal movement of trains between there and Imlay. The conductors were not in charge of a train and Carrier refers to them as conductor flagmen.

It is not disputed that the conductors were required to and did OS all trains to the train dispatcher at Sparks, Nevada. This obviously was to insure that opposing trains would not be on the single track at the same time. The conductors stopped and held the westbound trains at Cosgrave until an eastbound train has passed. Then they OSed the eastbound train and permitted the westbound to go on to Imlay. These messages to the train dispatcher were relayed by him to the operator at Imlay. It was a block operation performed by the Conductors at Cosgrave.

Carrier contends that telegraphers have never heretofore performed such work, under such circumstances on this Carrier's property and cites as proof its Exhibit "C" which was the disposition of a claim involving a different issue than one here. There is no proof in this record supporting the contention.

Furthermore Carrier says the listing of "Block Operator" in the Scope Rule did not reserve to telegraphers the work involved here. There was no operator located at Cosgrave.

The rule involved is as follows:

"Rule 1

"SCOPE

"Section (a). This agreement shall govern the employment and compensation of the following:

"Agents, assistant agents and ticket agents listed in the wage schedule, agent-telegraphers, agent-telephoners, agents (small non-telegraph), block operators, car distributors (if required to telegraph in the performance of their duties), draw-bridgetenders (levermen), managers of telegraph offices, teletype operators, printer machine operators, staffmen, telegraphers, telephoners (not including telephone switchboard operators), towermen, tower and train directors, wire chiefs, assistant wire chiefs, mechanicians, assistant or junior mechanicians, printer super-

visors, and occupants of any other positions listed in the schedule.

The rule names telephoners and block operators.

The same contentions of Carrier were presented in Awards 8263 and 8264 (McCoy) both dated March 10, 1958. This Board held in those two very similar cases that the true issue was whether the method used was a block operation and if so, then the OSing of trains to the dispatcher was work under the contract belonging to the telegraphers. There was no operator located where the calls were made in those cases. Indeed the conductors there used portable telephones which they cut into the dispatcher's wire. The reasoning in Awards 8263 and 8264 seems sound. We adopt and follow those awards.

The Conductors Organization is not an indispensable party to this dispute. It was given notice and declined to take part herein. See Awards 8263 and 8264.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September 1963.

CARRIER MEMBERS' DISSENT TO AWARD 11722 DOCKET TE-10093

The statements as to the basic facts appearing in the Opinion of Board are categorically contradicted by the record, and the conclusion that a sustaining Award in this case is dictated by Awards 8263 and 8264 is manifestly absurd, for the controlling rule laid down in those cases clearly requires denial of this claim.

The only conduct of the conductors at Cosgrave placed in issue by the Statement of Claim is telephoning of information to the dispatcher, and with respect to that telephoning, this obviously erroneous finding is made in the Award as a factual basis for sustaining the claim:

"It is not disputed that the conductors were required to and did OS all trains to the train dispatcher at Sparks, Nevada. This obviously was to insure that opposing trains would not be on the single track at the same time. . . ."

This finding is diametrically opposed to the facts of record. At page 25 of the record Carrier tells us that:

" . . . Conductors Farrell and Rainier, on those dates when they acted as flagmen at Cosgrave (Farrell on Aug. 15, 16 and 17, 1956 and Rainier on August 20, 1956) did not 'OS' trains. Eastward and westward trains were authorized by train order and time table and cleared and OS'd accordingly by the Telegraphers at Imlay and Winnemucca, as the case might be, on the dates in question. . . ."

(emphasis added)

Petitioner submitted no evidence and did not even deny the truth of the last-quoted sentence. The telephoning of the Conductors had no bearing whatever on the operation of opposing trains, but was in lieu of flagging and train protection work which otherwise may have been required of trainmen in connection with eastbound trains closely following each other.

The decision flies directly in the face of the Awards that are cited as its only support. It is said:

" . . . The reasoning in Awards 8263 and 8264 seems sound. We adopt and follow those awards."

While it is believed that the majority in Awards 8263, 8264 (McCoy) failed to properly evaluate the evidence, they applied a sound rule which is stated as follows in Award 8263, cited in Award 8264:

"The claim is of course based upon the Scope Rule. Under our uniform decisions, where the Scope Rule merely lists the positions covered without specifying the work reserved, it is to be interpreted as reserving to the employees covered the work which customarily and traditionally has been performed **exclusively** by those employees. In this case the Scope Rule names among others, telegraphers, telephoners and block operators. **Traditionally, these employees have handled all communications by telegraph and telephone controlling the operation and movements of trains. This is what Conductors Olson and Anderson did in this case**, over the eight mile block set up here. . . ."

In both Award 8263 and 8264 conductors admittedly handled by telephone many communications which **controlled** the operation and movements of trains through a restricted area, and this was the fact which the Board expressly held to be controlling. In Award 8263, the same paragraph from which we have quoted above, it is stated that:

" . . . It is also true, of course, that not every telephone call is telephoner's or telegrapher's work. But telegraph or telephone communication **to control the operation of trains** unquestionably belongs to this craft. This is not the simple case of the conductor of a train telephoning the nearest station that his train has cleared the main track, . . ."

(emphasis herein indicates emphasis in award)

There is not a scintilla of evidence in the entire record tending to establish that the conductors at Cosgrave handled by telephone any communication that controlled the movement of any train (for a definition of a communication or "order" that controls train movements, as distinguished from mere information furnished by an employe in train service to an individual who is in control of train movements, see Atchison, T. & S. F. Ry. Co. v. United States, 269 U.S. 268). Neither is there a scintilla of evidence in the entire record tending to show that the mere telephoning of information which the conductors did at Cosgrave has been handled by Telegraphers **exclusively** in the past. To the contrary, Carrier's repeated assertions in the record that such telephoning in the past has been consistently handled by other employes are not refuted. It is therefore obvious that the rule applied by this Board in Awards 8263, 8264 requires that this claim be denied.

For the reasons stated, and others which are equally obvious from a study of the record, we dissent.

/s/ G. L. Naylor

/s/ W. M. Roberts

/s/ R. E. Black

/s/ W. F. Euker

/s/ R. A. DeRossett