

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chesapeake and Ohio Railway (Chesapeake District) that:

1. Carrier violated the agreement between the parties when it required or permitted employes not covered by the agreement to perform communications work in connection with train movements at Mile Post 66 near Brems, Virginia.

2. Carrier shall now compensate the senior idle telegrapher on the district, extra in preference, to be determined by a joint check of Carrier's records, in an amount equal to a day's pay of 8 hours on January 23, 24, 25, 28, 29, 30, 31, February 1, 4, 5, 6, 7, 8, 1957.

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

Mile Post 66 on this Carrier's Rivanna Subdivision is located one-half mile east of the station at Brems, Virginia, is between Strathmore, Virginia and Columbia, Virginia, about two and one-half miles east of Strathmore and ten miles west of Columbia. The Virginia Electric and Power Company has a power plant at this location and had engaged a contractor to construct a flume under the Carrier's tracks which necessitated the use of a self-propelled pile driver. In order to avoid delay to trains passing this location, because of the pile driver obstructing the main track while working, the Carrier established an office of communication at Mile Post 66. A telephone was installed at Mile Post 66 and an employe from the Conductors' seniority roster was assigned to perform the necessary communications work at this location. Two brakemen were used to perform flagging work, one on each side of the office of communication.

Strathmore, to the west of MP 66, has three positions under the Telegraphers' Agreement providing continuous service; Columbia, to the east of MP

opposite track as described above. Therefore, the Carrier repeats that Award 1024 cannot properly control in the instant case.

Conclusions

The Carrier has shown that conductors have down through the history of this railroad performed such telephoning. The Employes have requested a rule designed to prohibit such telephoning by conductors, but no such rule has been negotiated. The fact that such a rule has been repeatedly requested is full proof of the non-existence of such a rule. If the scope rule covers, why would the Employes request a rule such as has been repeatedly requested and refused?

It is conclusive, therefore, that conductors instead of telegraphers have traditionally performed such telephoning, and that there has been no violation of the rules of the Telegraphers' Agreement in this case. The claim should be denied in its entirety.

All data contained in this submission have been discussed in conference or by correspondence with the Employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Because an electric company was constructing a flume under the tracks at MP 66 on Carrier's Rivanna Subdivision in the vicinity of Bremo, Virginia, the Carrier was required to furnish a pile driver to drive piles to support the tracks at the construction site. The agent-operator at Bremo did not report passing trains. Strathmore, Virginia, with continuous operators, is two miles west of MP 66; and Columbia, Virginia, where an operator is assigned 7:30 A. M. to 4:30 P. M. is ten miles east of MP 66. Both locations are OS stations. The control of movement of trains was done by dispatchers in Richmond by Centralized Traffic Control.

Permanent and temporary arrangements of the tracks were such that the pile driving equipment did not have to be removed from the track on which it was working to permit the passing of any trains. Nevertheless precautions had to be taken to see that the opposite track on which trains were operating at the particular time, was not fouled by the pile driving equipment.

Carrier assigned a conductor at the site of the pile driver work and provided him with a portable telephone connected with the block line between Columbia and Strathmore. A flagman was stationed to the east and another flagman was stationed to the west, at points where permanent telephones connected with the block lines are located. Each flagman was instructed to flag and stop all trains unless instructed by the conductor on the telephone not to flag a particular train and to permit it to pass the construction site without stopping.

When work started, the conductor was provided with a lineup of trains due to pass the construction area that day. To make certain of the time each train arrived, the conductor telephoned the operator at either Strathmore or Columbia to determine if the train was approaching or had passed these stations. He then made certain that the track over which the train was routed was free from obstruction by the pile driver on the adjacent track. When this was done, he telephoned the appropriate flagman to dispense with the flagging and the stopping of the train. Later, instead of the conductor calling the operators at

the stations, the operators advised the conductor when trains had reached their respective stations. Neither the conductor nor the operators maintained records of their conversations.

The Employees contend that the work assigned to and performed by the conductor was work covered by the scope rule of the parties' agreement. The Employees argue that the "prime purpose" of the work "was to control the obstruction of the main track and avoid delay to trains," that the "character of the work required at this location was that usually and customarily performed by a telephone operator and/or a block operator."

Carrier denies that the work of the conductor involved control of the movement of trains. Carrier asserts that:

"The sole purpose of telephoning between the conductor and the operators had to do with clearing the main tracks so that trains would not have to be stopped by the pile driving work. Control of the trains themselves was fully under the Rivanna Subdivision dispatcher and the operators at Strathmore and Columbia."

Carrier also asserts that "a continuing or indefinite slow order of 10 miles per hour had been placed at the flume work location, so that all trains had to come down to that speed in passing over the flume location, whether the pile driving or other work was going on at the time."

The scope rule of the agreement lists the positions covered by its terms including Telephone Operators and Block Operators, but does not specify the work reserved. As a result, we are required to determine whether the evidence establishes that the disputed work was of the character reserved exclusively to the employees by custom and tradition.

The evidence shows that while the "telephoning between the conductor and the operators had to do with clearing the main tracks so that trains would not have to be stopped by the pile driving work," as stated by the Carrier, the telephoning also was inextricably interwoven and directly involved with the control and movement of the trains over the construction area because if the main tracks were cleared, the train moved and if they were not, the train was to be stopped. The information received on the telephone by the conductor from the operator was, in effect, a direction to permit the train to pass by clearing the tracks of the pile driving work and, if the tracks were cleared, to instruct the appropriate flagman not to stop the train, but, if the tracks were not cleared, to permit such flagman to stop the train. The principles established in Award 8263, 8264 and 11722 are applicable. In Award 8263, the Board said:

"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. The Carrier no longer operates by manual block system, but the work

which Anderson and Olson did is typical of block operator work. They held trains, and they "cleared the block", using the dispatcher's telephone wire to receive instructions and to transmit information and orders. It is true that no permanent records were kept, such as are ordinarily kept by a block operator. If they had been, then of course the matter would be completely free of any possible doubt. But the primary function of the block operator, telegrapher, or telephoner, is communication work in controlling the movement of trains. If in a particular situation the Carrier dispenses with records as unnecessary in that situation, the work constituting the primary function of the job does not thereby cease to be telegrapher work. 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, such as has been the subject of some of our awards."

We cannot regard as properly before us the objection asserted at panel discussion that "Item 2 of the Employee's claim is for an unnamed employe and under Section 1 (a) of Article V, claims for unnamed employes are improper." The record shows that no such objection was made on the property or in the Carrier's submissions here.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of November 1963.