

Award No. 12768
Docket No. TE-11626

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, 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 and continues to violate the Agreement between the parties when it requires or permits employes not covered by the Agreement to perform the work of a block operator at the Hill Track Switch at Ashland Junction, Kentucky.
2. Carrier shall be required to compensate the senior idle telegrapher on the seniority district, extra in preference, in the amount of a day's pay (8 hours) beginning on October 25, 1958 and continuing each day thereafter until the violation is corrected.

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

Ashland, Kentucky is a division point on this Carrier's lines between Richmond, Virginia and Cincinnati, Ohio. The Division Officers and train dispatchers are located at Ashland. Ashland Junction is .3 miles west of Ashland and is the junction point with the Lexington Subdivision which extends to Lexington, Kentucky.

Prior to August 25, 1958, this Carrier maintained continuous telegraph service at Ashland Junction, twenty-four hours per day, seven days per week. This required three basic seven-day positions and, in addition, a regular rest day relief position. Effective at 2:29 P.M., August 25, 1958, this continuous telegraph, block and train order office was discontinued. Train orders formerly handled at Ashland Junction for Lexington Subdivision trains from the east were thereafter handled at Ashland and for Lexington Subdivisions trains from the west were thereafter handled at NC Cabin.

Employes submit a rough sketch (not to scale) of the track layout in order to give your Board a clearer picture of the operation in this territory.

a position at Frenchtown, the Board pointing out that only one train moved on 12 days during a 3 months period, this not being something that warranted the Carrier in having to reopen the office. The situation in the instant case is similarly infinitesimal, and in addition there has never been a telegraph office at Hill Track switch.

AWARD 8133

New Haven at Hyannis, Massachusetts. Conductors actually cleared manual blocks on the third trick when operators were not on duty, first and second trick operators being assigned. There is no parallel here, because as repeatedly shown no operators have ever been employed at Hill Track switch. All phoning is through the nearby NC Cabin operators, who are continuous or three-trick operators.

AWARD 8421

Pennsylvania at Sizerville, Pennsylvania. This case involved throwing ground or hand-throw switches, and as the Employees in the instant case have not made any claim on that account, it is unnecessary to unduly lengthen the record to discuss this case in detail.

The Carrier submits that such analysis of prior awards supports its position in the instant case, so that the claim should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The precise issue to be resolved in this case is whether or not the making of a telephone call by a crew member of train Number 21 to the Operator at NC Cabin informing him that the "Hill Track" switch has been restored to its normal position, constitutes "blocking" of trains in violation of the Telegraphers' Agreement.

Hill Track switch NC Cabin, Ashland Junction, and Ashland are all within a relatively short distance, one from the other. Prior to August 25, 1958, the Carrier maintained continuous telegraph service at Ashland Junction, twenty-four hours per day, seven days per week. This service was discontinued effective on the aforementioned date. Ashland Junction is .3 mile west of Ashland, which is a division point on the Carrier's lines between Richmond, Virginia and Cincinnati, Ohio. The Division Officers and train dispatchers are located at Ashland. NC Cabin is .7 mile west of Ashland and Hill Track switch is about .1 mile from the former telegraph office at Ashland Junction.

Train Number 21 stops each day at Ashland, where it receives a clearance, train orders, if any, together with instructions to report when clear of Hill Track switch. The train then proceeds from Ashland and stops at Hill Track, and a member of the crew throws the switch to permit the train to enter the Lexington Sub-division, the normal position of the switch being against his train's movement. When the train has used this switch, the member of the crew restores the switch and reports to the Operator at NC Cabin by telephone that he has restored the Hill Track switch. The Operator at NC Cabin does not make a record of this on his block sheet, but tells the dis-

patcher of the Lexington Sub-division by phone that No. 21 has restored the Hill Track Switch. The Organization contends that this telephone call constitutes "blocking trains" and as such is violative of the Scope Rule of the agreement.

Both the Organization and the Carrier have cited numerous awards to sustain their respective positions in this case, some of which have treated the term "blocking" rather extensively. We must therefore direct our attention to this term to ascertain its precise definition, if possible, as it is used in ordinary, every-day railroad parlance, and in pursuance thereof are referred to Arbitration Board Number 153, *ORT vs. PRR*, under "the Opinion of Chairman of the Board of Arbitration", wherein "blocking" is explained as follows:

"The experts who testified disagreed as to what constitutes blocking a train. Employee witnesses held that if a conductor or engineer does any of the acts which a block operator would perform if he were at the site, leading to the movement of the train, that act is blocking the train. Our view, however, is that the blocking of trains is a function made up of a number of elements, the most essential of which is the making of the decision that the train may move into the block, on clear or permissive indication. The other functions include communicating with adjoining block operators and the dispatcher, recording all necessary information on the block sheet, obtaining information concerning the location and readiness to proceed of the train in question, on the basis of all of which, in the light of the applicable operating rules, the operator is then able to reach a judgment as to whether, and how, the train may proceed into the block. The mere receiving of this decision which the operator makes over the telephone by the conductor or engineer hardly meets the description of the process of blocking the train."

In consideration of the foregoing discussion, it becomes apparent that there are several essential elements that must be present in order for a blocking of the train to take place. They are as follows:

1. The decision that the train may move into the block.
2. Communication with adjoining block operators and the dispatcher.
3. Recording all necessary information on the block sheet.
4. Obtaining information concerning the location and readiness of the train in question to proceed.

It is our judgment that the decision that train Number 21, could proceed on to the Lexington Sub-division had already been made by the Operator at Ashland. The movement and control of this train came within his area of jurisdiction and responsibility and he assumed and executed that responsibility in accord with the terms of the Telegraphers Agreement. We submit that the blocking operation was accomplished at Ashland, by the employee whose duty it was to do so. The use of the telephone after the fact of blocking, by an employee outside the scope of the Telegraphers Agreement, particularly when such use is incidental to the execution of his principal responsibility, cannot by logic, reason or contractual construction be denied him. We cannot subscribe to the theory propounded by the Organization that this constituted blocking.

The Organization has relied heavily on Awards 10978, 11848, 8263, 8264, 11722, 10699, 11298 inter alia. We do not think it is imperative for a proper adjudication of the issue in this case to elaborate on the above citations in this opinion. It is our judgment that a dispassionate, objective study of them leads to the conclusion that they are indeed distinguishable from the case at hand. This judgment we adopt.

Insofar as the Scope Rule of the Agreement, is concerned, suffice it to say, this rule is essentially general in nature, consisting only of a list of job titles without a detailed description of the work to be performed. In such a case, the Organization must prove affirmatively by a preponderance of evidence, that a telephone call such as the one in dispute, has by history, tradition and custom been within the exclusive province of the telegraphers. (See Awards 9953, 10425, 10918, inter alia). An examination of the record reveals that it has failed to present the requisite body of proof to sustain its' position and we must accordingly deny this claim for the foregoing reasons.

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 Employees involved in this dispute are respectively Carrier and Employees 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 17th day of July 1964.