

Award No. 13231

Docket No. TE-12693

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
NEW YORK CENTRAL RAILROAD—SOUTHERN DISTRICT
(Ohio Central Division)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Western District), that:

1. The Carrier violated the terms of an agreement between the parties hereto when on April 30, 1960, it permitted or required Conductor Souders on Work Extra 8880 at Robertsburg, W. Va., an employe not covered by the Telegraphers' Agreement, to perform the work of a block operator and/or a telephone operator in handling (verbal) train orders over the telephone governing the operation of his train.

2. The Carrier further violated the terms of the parties' agreement when on May 1, 1960, it permitted or required Conductor Rollins on 1st 35 at Arbuckle, W. Va., to report Work Extra 8880 in the clear over the telephone to the train dispatcher and to block operators at Rumer, W. Va., and Kanauga, Ohio.

3. The Carrier shall, because of the violations set out in part 1 and 2 of this statement of claim, compensate Extra Operator C. C. Wills for a day's pay (8 hours) at the rate of the operator's position at Arbuckle, W. Va.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective January 1, 1955, and as otherwise amended.

At page 78 of said agreement are listed the positions existing at Arbuckle, W. Va., on the effective date of that agreement. The listing reads:

LOCATION	SHIFT	CLASSIFICATION	HOURLY RATE
Arbuckle, W.Va.	1	AC-X	1.865
	2	D	1.841
	3	C	1.829

At a time not shown in the record of this case the Carrier discontinued the above listed positions.

Third Division awards likewise support the Carrier's contention that these conversations, between the train conductors and operators or dispatchers, are not violative of the Agreement between the parties.

The following are relevant:

Award 700: ORT vs Big 4 (NYS Line)

"The use of company telephone lines by or between division officers etc., or other employees in connection with matters under their jurisdiction is also no different from the recognized practice in effect on this and other railroads . . ."

Award 1553: ORT vs Big 4 (NYC Line) Referee E. L. McHaney

"It is also well settled, in the opinion of this referee, that not all telephone communication is subject to the Telegraphers Agreement . . ."

Also see Awards 603, 645, 1145, 1277, 1305 and 1320.

Also, the Carrier is contending that because the employees do not cite any particular rule as being violated, the following Third Division Awards lend further support:

Award 8851: BR&SC vs Rock Island, Referee Norris C. Bakke

"We cannot sustain claims against a Carrier without showing a violation of some rule of the Agreement."

Also see 8852, 8853, 8854.

CONCLUSION: The Carrier has shown that:

1. The Agreement has not been violated and the fact the employees refrained from citing a particular rule violation gives additional strength to this contention.
2. The awards cited by the employees do not support their position because there is no factual similarity between the situations in the Awards when compared to this case.
3. Awards of the N.R.A.B., some of which arise from disputes between the same parties on this and other districts of the same property, lend support to the Carrier's position that the conversations herein disputed have long been recognized as necessary and not violative of the Agreement.

Claims as here presented are without merit and should be denied.

OPINION OF BOARD: In the area involved here, trains were operated by timetable and train orders, supplemented by a manual block signal system, the manual block extending from Kanauga to Rumer and was in control of operations located at those points. On April 30, 1960, Conductor Souders was in charge of Work Extra 8880 engaged in certain switching near Robertsburg, West Virginia. The crew by Order No. 58 from the operator at Arbuckle was instructed to do certain switching at Robertsburg and then clear the main track at Robertsburg prior to 10:30 P. M. At 10:36 P. M. the Conductor called

the operator at Rumer, West Virginia, and requested the operator to advise the dispatcher that he had relieved himself and all members of his crew in order to avoid violation of Hours of Service Law, that they had been unable to clear the main track and were standing on the main track at Robertsburg.

Train First 35 departed from Rumer at 11:13 P. M. with Train Order No. 73 issuing instructions to 1st 35 to handle the 26 cars and engine 8880 from Robertsburg to Arbuckle and place the cars and engine in the clear at Arbuckle. At about 12:45 A. M. on May 1, 1960, Conductor Rollins, in charge of 1st 35, advised the operators at Rumer, West Virginia, and Kanauga, Ohio, that the set-out had been made.

There is an operator regularly employed at Arbuckle from 6:30 A. M. to 2:30 P. M. On the tour of duty immediately prior to the time of this claim the operator had worked continuously until 7:29 P. M. There was no operator stationed at Robertsburg.

As Conductor Souders could not put his train in the clear as all available tracks at Robertsburg were filled with stored cars, he called the operator at Rumer, West Virginia and requested the operator to advise the train dispatcher of his predicament. Upon being apprised of the situation, the train dispatcher issued verbal instructions in lieu of a train order advising Souders to leave his train on the main track at Robertsburg and he would have 1st 35 pick up the train, move it over to Arbuckle and put it in the clear there. Claimant contends that such instructions constituted a verbal train order, the handling of which by an employe outside the parties' Agreement violated the terms thereof.

After Conductor Rollins had picked up Work Extra 8880 and taken it to Arbuckle and put it in the clear at this station at about 12:45 A. M., May 1, 1960, he reported to the train dispatcher over the telephone as well as the block operators at Rumer and Kanauga that Work Extra 8880 was clear of the track. Claimant contends these acts of Conductor Rollins constituted the performance of block operators' work at a station where an operator was stationed and as such violated the parties' Agreement.

Carrier maintains in opposition to Claimants' position that in neither of the instances cited in the Statement of Claim was a train order involved; that, further, there being no operator stationed at Robertsburg, it makes no difference whether the Board finds the telephone conversation between Conductor Souders and the operator at Rumer was a train order or not, that at open stations where no operator is employed the transmitting of train orders is not reserved exclusively to telegraph or block operators.

The train order rule in the effective Agreement between the Carrier and Telegraphers is, as follows:

ARTICLE 22

Handling Train Orders

"(a) No employes other than covered by this agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency in which case the telegrapher will be paid for the call."

As to the conversation between Conductor Souders and the operator

though there may be some merit to Claimant's contention that this telephone conversation was a verbal train order involving the movement of trains within the awards cited from Special Board No. 137 these awards do not disclose that any of the incidents involved in them were at open stations. Consequently, they become irrelevant as there was no operator stationed at Robertsburg and as was said in Award 12183 (Kane): "Thus at points where no operator is employed the handling of train orders is not exclusively reserved to the operators." Claimant has failed to prove under the Scope Rule of the Agreement that this work was reserved exclusively to telegraph operators so that portion of the claim must fall.

As to later conversations between Conductor Rollins, the dispatcher and the operators a different problem is presented as there was an operator stationed at Arbuckle. We must then consider whether or not these conversations were verbal train orders. The telephone calls by Conductor Rollins came after the actual "blocking," which had already taken place in compliance with the Agreement, and was merely incidental to the execution of his principal responsibility. As was stated in Award 12768 (McGovern):

"The use of the telephone after the fact of blocking, by an employe 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."

For the foregoing reasons we are led to the conclusion that the Agreement has not been violated.

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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1965.