

Award No. 13489
Docket No. TE-12760

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

BANGOR AND AROOSTOOK RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Bangor and Aroostook Railroad, that:

1. The Carrier violated the Agreement between the parties, when on October 2, 3, 4, 5, 6, 7, 10, 11 and 12, 1960, it required or permitted a Yardmaster at Northern Maine Junction, Maine, and a Yardmaster at Oakfield, Maine, neither of whom are covered by the Telegraphers' Agreement, the former to transmit and the latter to receive, messages of record in the form of train consists over the telephone prior to the starting time of the claimant.

2. The Carrier shall for each date set out in Part 1 of this statement of claim, on which the violations complained of occurred, compensate P. R. Robertson, regularly assigned occupant of the third shift operator's position at Oakfield, Maine, a "call" in accordance with the provisions of Article XVIII, paragraph (c) of the parties' Agreement.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective May 1, 1946, as revised and amended.

At page 55 of said agreement are listed the positions existing at Northern Maine Junction, and at Oakfield, Maine on the effective date thereof. For your Board's ready reference, the position listings, referred to above, are as follows:

"STATION	POSITION	RATE PER HOUR
* * *		
No. Me. Jct.	Opr. 1st	\$1.723
No. Me. Jct.	Opr. 2nd	1.699
No. Me. Jct.	Opr. 3rd	1.675
* * *		
Oakfield	Agent	1.675
Oakfield	Opr. 1st	1.639
Oakfield	Opr. 2nd	1.639
Oakfield	Opr. 3rd	1.639
* * * "		

In conclusion, the Carrier asserts the claim is without merit; it is not supported by rule, precedent or practice, and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: In September, 1959, the Carrier discontinued the second shift operator's position at Oakfield, Maine. Prior to the discontinuance of the position the occupant, as part of his regularly assigned duties, handled telephone communication work in connection with the transmission of messages, orders and reports of record, part of the messages handled being G.S.-1 train consists. On certain days in October, 1960, set forth in the Statement of Claim, during the time formerly covered by the second shift operator and prior to the third shift operator, the Claimant herein, coming on duty a Yardmaster at Northern Maine Junction, Maine, transmitted and a Yardmaster at Oakfield, Maine, received messages in the form of G.S.-1 train consists over the telephone. It is conceded that neither of these Yardmasters was covered by the Telegraphers' Agreement.

It is the position of the Claimant, P. R. Robertson, that the work in connection with the transmission of messages of record (train consists) over the telephone, in lieu of the telegraph, is telephone work reserved exclusively, historically and traditionally, by custom and practice, to employees covered by the Scope Rule of the Telegraphers' Agreement.

It is the Carrier's contention to the contrary that there is nothing in the Scope Rule of the Agreement which prohibits a Yardmaster from ascertaining information as to the consist of trains arriving at his terminal; that the telephone circuits were not the exclusive right of any craft. The Carrier in its initial submission cites instances of past practice wherein messages in the form of train consists had been transmitted and received by employees not covered by the Telegraphers' Agreement. There is no denial in Claimants rebuttal submission of the validity of this evidence.

In Award 6032 (Whiting) the Scope Rule in question is similar to the one we have in the instant Agreement. We note the following:

"This claim involves the receipt of lineups by section foremen over the telephone, in one case from the dispatcher and in another case from an adjoining station, at points where employees covered by the agreement are assigned but during hours when they were not on duty. It is contended that such action is a violation of the scope rule of the agreement between the parties.

"This is not a new issue and while our awards are conflicting there is a fair degree of unanimity upon the proposition that where, as here, the scope rule lists positions instead of delineating work, it is necessary to look to tradition, historical practice and custom to determine the work which is exclusively reserved by the scope rule to persons covered by the agreement."

It has been urged in behalf of the Claimant that the issue here is not entirely the use of the telephone by the Yardmaster, alone, but rather the type and nature of the communications made over the telephone; that the messages transmitted and received here were communications of record involving the movement of trains which is the traditional work of operators and cites Award 8663—Guthrie in support of the contention.

As to the nature and type of work here in question we note the following in Award 6996—Carter:—

"The work specifically claimed by the Telegraphers is the copying and sending of messages not directly concerned with the movement of trains, the sending of and receiving consists and reports of record, etc., having nothing to do with the control or movement of trains." (Emphasis ours.)

In Award 11708—Dolnick which involved the same parties, as here, and on the same property, similar questions were submitted to the Board for consideration. The conclusion arrived at in part was, as follows:

"It is a well established principle of this Division that since the Scope Rule of the Agreement does not define the work of the employees, it is necessary to ascertain the historical, traditional and customary practice."

Claimant has failed to show, that historically and traditionally it has been the custom and practice on this property to reserve the delivery of messages in the form and type of train consists exclusively to employees coming under the Telegraphers' Agreement.

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 27th day of April 1965.