

Award No. 14152

Docket No. TE-13980

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

**NEW YORK, SUSQUEHANNA AND WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Susquehanna and Western Railroad, that:

1. Carrier violates the parties' Agreement on Saturday of each week by permitting or requiring train crews to OS and clear trains and handle fixed block signals at Sparta Junction, New Jersey.

2. Carrier shall be required to compensate J. C. Cooke, regularly assigned agent-operator at Sparta Junction, or his successor, a call (three hours at time and one-half rate) for each Saturday that the violation exists, commencing August 26, 1961.

3. Carrier shall permit a joint check of records to determine dates and amounts due.

EMPLOYEES' STATEMENT OF FACTS: Mr. J. C. Cooke, claimant in this case, is the occupant of the agent-operator position at Sparta Junction, New Jersey. His position is in the five-day category; assigned to work Monday through Friday. The Saturday and Sunday rest days are not covered by relief.

The relevant facts of the issue which precipitated this claim are shown in the paragraph of General Chairman Matthews' letter to Mr. Sease, dated October 29, 1962 (ORT Exhibit 12), which is as follows:

"There can be no dispute in the facts as they exist at Sparta Junction. In order for a NYS&W train to cross the L&H Railroad, permission must be obtained from the L&H dispatcher to do so, a consist of the train must be given by the operator and the operator places a distant and a home signal against trains of the L&H Railroad and then gives the NYS&W train a proceed signal. He must report the train clear of the L&H tracks. Now all this work is clearly defined in the Agreement as telegrapher's work. Mr. Cooke, the incumbent of the Agent-Operator position at Sparta Junction, has advised me

under prior management of the Railroad. (It might be well to state here that for many years the New York, Susquehanna and Western Railroad was operated as a part of the Erie Railroad System. On March 1, 1940 it commenced its own operations with its own personnel and supervision.)

That it is not necessary that trains be OSd to Carrier's Dispatcher from Sparta Junction on Saturdays. Service is so curtailed that many times there is only one train operating on the Railroad on a Saturday.

As a further indication that the claim of the employees in this instance is without merit, we submit that it was not the intent of the parties signing the June 18th, 1957 agreement to negate a practice which had been in existence for at least 17 years prior and probably for at least as many or more years before that; in fact neither the Carrier nor the Telegraphers were empowered to agree between themselves that work which had been and historically was the work of others, either in whole or in part, would thereafter become the exclusive work of the Craft, party to the agreement.

In summary, it is our position that there has been no violation of agreement, since the work was not exclusively Telegrapher's work, historically, either by practice, custom or agreement. Carrier contends that Telegraphers seek to place an interpretation on the agreement which neither of the parties who had negotiated it had ever intended. In our denial of this claim we submitted that had it been the intent of the parties who negotiated the agreement to interpret it as Telegraphers now seek to do, most certainly, in a continuing practice of this nature a protest or claim would have been received long prior to the filing of the present one — not after a lapse of 5 years — during which entire period, to our knowledge no claim was ever filed nor mention made of a possible violation by the continuance of this practice.

It is submitted that in numerous awards of the Third Division in similar cases there is ample precedent for a ruling in favor of the Carrier in this particular instance.

For the foregoing reasons it is respectfully submitted that all claims in this case should be denied.

Attention is called to the submission of the claim on the basis of 3 hours at time and one-half call time. Historically it has been held by your Honorable Board that time lost cannot be at penalty time. Should a finding be made for the employees it is respectfully requested that no greater than pro-rata rate be granted.

OPINION OF BOARD: The relevant facts of the issue which precipitated this claim are shown in a paragraph of the General Chairman's letter to the President and General Manager of the Carrier which is as follows:

"There can be no dispute in the facts as they exist at Sparta Junction. In order for a NYS&W train to cross the L&H Railroad, permission must be obtained from the L&H dispatcher to do so, a consist of the train must be given by the operator and the operator places a distant and a home signal against trains of the L&H Railroad and then gives the NYS&W train a proceed signal. He must report the train clear of the L&H tracks. . . . Mr. Cooke, the incumbent of Agent-Operator position at Sparta Junction, has advised me that he does perform such work on week days. . . ."

It is the contention of the Claimant that all of this work is clearly defined in the agreement as telegraphers' work and relies principally on Rule 1, the Scope Rule of the Agreement and Rule 45. The pertinent provision of the Scope Rule is:

"RULE 1. SCOPE

(a) This agreement shall govern the employment, working conditions and compensation of the following:

* * * * *

Operators of any device used to transmit or receive any item of record by any process between two or more points

* * * * *

Rule 45 of the agreement, the effective date of which is June 18, 1957 provides in part, as follows:

"The parties hereto agree that all other rules, practices, or interpretations (either verbal or written) in conflict herewith are superseded and cancelled, as of the effective date hereof."

Carrier supplies these additional facts: There is a tilting board signal west of Sparta Junction Station that controls the movement of Susquehanna trains over the grade crossing of the two Railroads at that point; its normal position is against a Susquehanna train movement and clear to L&H; there is a telephone affixed to the outside of the Station building at Sparta Junction by the use of which communication with the L&H dispatcher can be had; that when train crews arrive at Sparta Junction the crew simply contacts the L&H dispatcher for permission to cross the L&H track.

It is the Carrier's contention that this has been the general practice over Carrier's entire system when trains are crossing the tracks of another Carrier and has been such practice on this property for over twenty years which has continued uninterruptedly before and after the 1957 Agreement; that the conversation of the conductor or other member of the train crew is not a communication or item of record and never has been the exclusive work of employees under the Telegraphers' Agreement.

We cannot find that Rule 45 is pertinent here as the present practice of the Carrier, as set forth in this Opinion, is not in conflict with the agreement. There is no evidence in this record of any rule or requirement by company instruction that requires the conductor or other member of the train crew to keep any record of the conversation of the conductor with any dispatcher concerning this work. The mere fact that a record may be made by the L&H dispatcher does not appear to fall within the category of what is generally recognized as an item or communication of record. It does not appear, therefore, that the work performed by train crews which is presently complained of was the exclusive work of employees covered by the effective Telegraphers' Agreement.

See Award 11720, a denial award, wherein the Scope Rule contained the following provision, "operators of mechanical machines used for transmitting or receiving communications from one city to another" which is somewhat comparable to the provision in this agreement, heretofore cited.

Having reached the above conclusion, any discussion as to the effect of Petitioners having acquiesced in the practice for five years after the effective date of the agreement would be superfluous.

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 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 11th day of February 1966.