

Award No. 14459

Docket No. TE-12413

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Western Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka and Santa Fe Railway, that:

1. The Carrier violated the Agreement between the parties when, on or about July 22, 1959, it removed the work of operating switches and signals governing the movement of trains heading in and out main line tracks and other tracks at Isleta, New Mexico, from employes covered by the Telegraphers' Agreement and delegated the performance of this work to employes not within its coverage;

2. The Carrier shall be required to restore said work to the scope of the Telegraphers' Agreement to be performed by employes covered thereby; and

3. For each and every eight hour shift that the work previously performed by employes under the Agreement at Isleta, New Mexico, is performed by means of CTC equipment operated by train dispatchers at Las Vegas, New Mexico, the Carrier shall be required to compensate the senior idle extra telegraph service employe in an amount equivalent to a day's pay at the rate applicable to the positions at Isleta, New Mexico, and, if there be no idle extra telegraphers, then the Carrier shall compensate the senior telegraph service employe or employes idle on a rest day in an amount equivalent to a day's pay at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: Agreement between the parties, bearing effective date of June 1, 1951 is in evidence.

For many years the Carrier maintained an interlocking plant at Isleta, New Mexico. In this office the Carrier maintained three shifts of telegraphers (leverman) in an around-the-clock service who performed the work of operating switches and signals governing the movement of trains in and out of Isleta.

First: Claim is a proper one for consideration as to the requirements of Article V, Section 1-a of the August 21, 1954 Agreement. The National Railroad Adjustment Board has repeatedly held the fact a claim is general and fails to name the claimant except as a class is not a bar to its disposition and that who gets the penalty is but an incident to the claim itself and not a matter in which the Carrier is concerned but if the Agreement was violated it must pay the penalty therefore in any event.

Second: This Organization has made no agreement with the Carrier to permit telegraphers' work to be transferred to another craft or crafts of employment. We have always maintained this to be our work and by the removing of same to another office to be performed by other crafts is not in agreement with us and a violation of our Agreement.

Third: The employes clearly outlined their position in a letter dated November 29, 1943, file 25-K-1143, from former General Chairman J. F. Anderson to the General Managers reading in part:

'It is our position that if dispatchers are assigned to handle any centralized traffic control machine it will be a violation of the Scope Rule and Article II (a) of the current Telegraphers' Schedule; therefore, this our request that employes covered by the Scope Rule of the Telegraphers' Schedule be assigned to handle the control machines at locations where such machines are installed or to be installed.'

Fourth: Prior to July 22, 1959, these switches and signals were located at Isleta and rightfully manned by employes of the telegraph class. On July 22, 1959, when the work of operating switches and signals were removed from employes of the telegraph class and transferred to employes not covered by the Telegraphers' Agreement, the agreement was violated.

Yours truly,

/s/ K. A. Vose (jf)
Acting General
Chairman"

(Exhibits not reproduced.)

OPINION OF BOARD: After modified control equipment was placed in service on July 22, 1959, the work of manipulating levers for switches at Isleta, New Mexico, which had been performed by telegraphers, was transferred to train dispatchers who were not subject to the Telegraphers' Agreement. As a result three full time telegraphers were eliminated.

The claim herein is that the work be returned to telegraphers and that compensation be paid to the senior idle extra telegraph employe.

The Telegraphers' contention is that the work belongs to telegraphers by virtue of the Scope Rule in the Agreement.

The Carrier takes the position that the work in question can properly be performed by train dispatchers where the CTC equipment is located in a train dispatcher's office.

The Carrier raises a further question of the authority of this Board to resolve the issue. It asserts that the matter involves a jurisdictional dispute between the Order of Railroad Telegraphers and the American Train Dispatchers' Association and that this Board therefore has no jurisdiction to hear and decide said dispute.

The question of authority of the Board to hear jurisdictional disputes has come before this Board many occasions. The consensus of opinions in these awards clearly indicate that the Board recognizes it is without authority to pass upon these disputes.

In Award 4452 (Referee Carter) the Board outlined its reasoning for the holding that it lacked jurisdiction and stated that the matter involved a jurisdictional dispute. It remanded the case.

In Award 4768 (Referee Stone) the Board pointed out that when the duties were originally assigned to the two crafts, CTC was not in operation. Hence, it determined that the proper assignment of CTC duties constituted a jurisdictional dispute and cited the holding in Award 4452.

Awards 8143 (Referee Elkouri) and 9209 (Referee McMahon) involve the same parties as the instant dispute and a similar factual situation. Both awards refer to Awards 4452 and 4768 and concur in the opinions therein. The Board in both cases (between the same parties) finds that a jurisdictional dispute exists and determines that it is without authority to hear and decide the matters. It accordingly remands the cases to the interested parties for negotiation.

In addition to the above cited cases, the Board has remanded cases involving jurisdictional disputes in numerous cases which are not herein individually reviewed but are cited as support for the opinion herein, to wit: Awards 4769, 6224, 6825, 8458, 8460, 8544, 8660, 10303, 10725, 11161, 11821, 14341 and 14342.

It must be noted that the instant case presents the same question of jurisdictional dispute as in the above cited case.

The Board must conclude that the jurisdictional dispute in the instant case requires that it recognizes that it is without authority or jurisdiction to hear and determine the instant claim. The matter should be remanded to the parties for negotiation and in case of failure, to the National Mediation Board which is the proper forum for final disposition.

In view of the fact that the determination has been made that a jurisdictional dispute exists, there is no need to discuss the issue raised by the Carrier relating to unnamed Claimants nor to dwell upon procedural matters connected therewith.

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 does not have jurisdiction over the dispute involved herein.

AWARD

Case remanded in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1966.