

Award No. 14494

Docket No. TE-13902

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)**

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

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

Carrier violated the parties' Agreement by requiring or permitting train service employees not covered thereby to handle train orders at the locations and on the dates shown below:

CLAIM NO. 1

(a) At Newington, Connecticut, on Monday, September 25, 1961.

(b) Carrier shall now compensate A. L. Ferriera a day's pay (at the currently adjusted rate of the former position at Newington) totaling \$19.38. (Carrier Docket 9123)

CLAIM NO. 2

(a) At Avon, Connecticut, on Monday, September 25, 1961.

(b) Carrier shall now compensate L. Bloom a day's pay (at the currently adjusted rate of the former position at Avon) totaling \$19.57. (Carrier Docket 9123)

CLAIM NO. 3

(a) At New Britain, Connecticut, on Wednesday, July 12, and Wednesday, August 2, 1961.

(b) Carrier shall now compensate G. W. Wheeler a day's pay for each of the two above dates (at the currently adjusted rate of the former position at New Britain) totaling \$42.50. (Carrier Docket 9123)

CLAIM NO. 4

(a) At Middlefield, Connecticut, on Friday, October 11, 1961.

(b) Carrier shall now compensate H. G. DeRosier a day's pay (at the currently adjusted rate of the former position at Middlefield) totaling \$19.62. (Carrier Docket 9152)

CLAIM NO. 5

(a) At Charter Oak, Connecticut, on Wednesday, October 18, 1961.

(b) Carrier shall now compensate H. G. DeRosier a day's pay at the minimum rate of the seniority district totaling \$19.02. (Carrier Docket 9153)

CLAIM NO. 6

(a) At Farmington, Connecticut, on Thursday, November 9, 1961.

(b) Carrier shall now compensate A. J. Barkaskus a day's pay (at the currently adjusted rate of the former position at Farmington) totaling \$19.65. (Carrier Docket 9154)

CLAIM NO. 7

(a) At New Britain, Connecticut, on Friday, October 13, 1961.

(b) Carrier shall now compensate P. W. Suprono a day's pay (at the currently adjusted rate of the former position at New Britain) totaling \$19.57. (Carrier Docket 9155)

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement between the parties relative to wages and working conditions, effective September 1, 1949, copies of which are on file with your Board, and which Agreement was in effect during the period that this dispute arose.

The claimed violations in this dispute (except Claim No. 5) occurred at points where stations had (until recent years) been maintained at which employees under the Agreement had been employed and whose duties included the handling of train orders. These stations have been discontinued on various dates. The positions at the locations involved in Claims Nos. 1, 2, 3, 4 and 7 are still shown in the Wage Scale of the current Agreement (pages 53 and 54), listed as follows:

Location	Occupation	No. Positions	Rate	Claim No.
Avon	Agent-Operator	1	\$1.69	2
Middlefield	Agent-Operator	1	1.552	4
Newington	Agent-Operator	1	1.522	1
New Britain	Ticket Agent-Opr.	1	1.756	3 & 7

In each instance cited above train service employees copied train orders, thus performing service for which the Organization had contracted to be performed by employees represented by it.

In Claim No. 1 (Newington-September 25, 1961) a train order was received by Conductor Smith of a train designated NX-17, and the train order read as follows:

Train Order No. 446	Sept. 25, 1961
To: C&E Eng. 544	at Newington via
	Operator, Plainville

Eng. 544 run extra Newington to Highland Jct. not protecting against Westward extra trains between Plainville and Highland Jct.

Claim No. 5, the Charter Oak case, was appealed by General Chairman Marr's letter of January 18, 1962, copy attached as Exhibit "D."

Claim No. 6, the Farmington case, was appealed by General Chairman Marr's letter of January 18, 1962, copy of which is attached as Exhibit "E."

Claim No. 7 was appealed by a letter of General Chairman Marr, also dated January 18, 1962, copy of which is attached as Exhibit "F."

Claims Nos. 4, 5, 6, and 7 were denied by my decision of February 9, 1962, copy of which is attached as Exhibit "G."

Further pertinent correspondence which will be referred to here is General Chairman Marr's reply of March 9, 1962, to my decisions of January 17 and February 9, 1962, covering the claims in question. This letter is attached as Exhibit "H." My further reply to Mr. Marr is dated April 18, 1962, copy of which is attached as Exhibit "I."

A copy of the agreement between the parties effective September 1, 1949, is on file with your Board and is by reference made a part of this submission.

(Exhibits not reproduced).

OPINION OF BOARD: This dispute involves seven claims at various locations due to conductors copying train orders at outlying points. There were no telegraphers employed at these points and the orders were copied by telephone from a telegrapher at the next open block and train order station. The Claimants herein, regularly assigned telegraphers at various locations on the Hartford District of the New Haven Division, allege that they should have been called during their off-duty hours to copy train orders.

In support of its contention that the Agreement was violated, the Organization relies upon the Scope Rule. In fact, the following quote from the Organization's rebuttal is particularly noteworthy:

"It is evident, and of particular note, as the file record confirms, that the Employees have not advanced or relied upon Article 20 as the rule we charge was violated. We contended that the breach of contract involved the Scope Rule."

The Scope Rule negotiated by the parties is hereinafter quoted:

"ARTICLE 1 SCOPE

The following rules and rates of pay shall constitute an agreement by and between The New York, New Haven and Hartford Railroad and The Order of Railroad Telegraphers, and shall govern the working conditions and compensation of employees in the following positions:

- Telegraphers
- Telegraphers — Clerks
- Telephone Operators (except Telephone Switchboard Operators)
- Telephoner — Clerks
- Agents — Freight and Ticket (as shown in wage scale)
- Agent — Telegraphers

Agent — Telephoners
Assistant Agents (as shown in wage scale)
Car Distributors — On Divisions
Signal Station Operators (Towermen)
Levermen
Tower and Train Directors
Block Operators
Staffmen
C.T.C. Machine Operators
Operator — Switch Tenders
Operator Mechanical Telegraph Machines used in
transmitting or receiving communications of record

all of whom are hereinafter referred to as employees.”

It is thus evident that the thrust of the Organization's claim is based upon the Scope Rule which merely lists positions and does not particularize the work to be performed. As we have previously stated, where the Scope Rule is general in character, the burden is upon the Organization to prove such exclusive right by practice, custom and tradition. See Award Nos. 12706, 11661, 10675 and others.

In parrying the Organization's arguments, the Carrier cites numerous specific instances, both on the Boston Division and the New Haven Division, where conductors copied such orders during the period from 1958 through 1962.

Furthermore, in reaching our conclusion herein that the Agreement was not violated, we have specifically limited our analysis of the issue to the criteria usually associated with the Scope Rule as urged by the Organization, and not to any other contention.

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: Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1966.

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