

Award No. 14651
Docket No. TE-12773

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk & Western Railway (Virginian Lines) that:

1. Carrier violated the agreement between the parties when it required or permitted employes not covered by the agreement to transmit messages and reports from Sewells Point, Virginia, on May 19, 24, 28, 29, 30, 31, June 3, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 24, 1960.

2. Carrier shall compensate the senior idle employes, extra in preference, in the amount of a day's pay (8 hours) on each date set forth above.

EMPLOYEES' STATEMENT OF FACTS: The agreement between The Order of Railroad Telegraphers and the Virginian Railway Company, effective September 1, 1945, as amended and supplemented, is available to your Board and by this reference is made a part hereof. The Norfolk & Western Railway merged with the Virginian Railway, effective December 1, 1959, and the Norfolk & Western Railway now controls the operation but the agreement referred to governs the territory which was formerly the Virginian Railway.

Sewells Point, Virginia, is a station on the Carrier's lines which was formerly on the Virginian Railway. At this location the Carrier maintains a freight yard facility. Effective with the merger, this facility has been used primarily as a storage yard. There are two switching trains which operate daily in and out of Sewells Point, between Sewells Point and Lamberts Point and as far west as South Branch. Frequently other trains operate from this yard moving the storage surplus (either loads or empties) to some other station. This train operation in and out of Sewells Point requires communication service.

Prior to December 1, 1959, the Carrier maintained continuous telegraph service around the clock at Sewells Point with three seven-day telegrapher positions and a rest day relief position. Effective with December 1, 1959, these

coal loads from the west are moved to and stored in Sewells Point Yard. When the congestion is relieved to the extent that such overflow shipments can be handled they are moved by yard crews from Sewells Point to Norfolk and Western facilities, all of which moves are made within the confines of Norfolk Terminal.

The changes described above eliminated the work of sending and receiving consists and other types of messages and reports concerning train movements which work was formerly performed by telegraphers at Sewells Point as set out above. Therefore, there being no further need for the services of telegraphers at Sewells Point, the positions of telegraphers at that point were abolished and the telegraph office closed effective December 9, 1959.

Prior to the closing of the telegraph office at Sewells Point Yard conductors or yardmasters informed telegraphers at the various telegraph offices located within Norfolk Terminal or the dispatcher at Victoria, Virginia concerning movements by yard crews between Sewells Point and other points within Norfolk Terminal. When such information was furnished to a telegrapher, the telegrapher, informed the dispatcher at Victoria concerning the movement. When such information was furnished the dispatcher at Victoria, the dispatcher informed telegraphers within Norfolk Terminal who were concerned with the movement. After the telegraph office at Sewells Point was closed, yard conductors and yardmasters continued to inform the dispatchers and telegraphers as set forth above concerning yard movements at Norfolk Terminal.

The Employes filed the following claims:

"1. Carrier violated the agreement between the parties when it required or permitted employes not covered by the agreement to transmit messages and reports from Sewells Point, Virginia, on May 19, 24, 28, 29, 30, 31, June 3, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 24, 1960.

2. Carrier shall compensate the senior idle employes, extra in preference, in the amount of a day's pay (8 hours) on each date set forth above."

The Carrier denied the claims.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties here are the same as those involved in Award No. 4811, Carrier being the surviving corporation of a merger between the Virginian Railway Company and Norfolk and Western Railway Company. Further, this claim rests on Award No. 4811, Claimants contending that the Agreement as interpreted therein was violated by the transmission of messages as set out in Employee's submission.

We have studied Award No. 4811 and find there is no palpable error in that decision. We will accordingly be governed by its interpretation of the agreement. Since Claimants concede they have no claim apart from that decision, our task will be to compare the facts of Award No. 4811 with the instant claim.

The messages incident to this claim were all dispatched from Sewells Point, a yard in the Norfolk terminal, a sprawling complex with the diameter of 17 or more miles composed of the yards of the two merged lines.

Sewells Point is the location of the yard office from which emanated the claim in Award No. 4811, such claim arising from the abolition of the three telegraph positions located there. The positions were restored in compliance with such award. With the merger, however, the function of the yard office at Sewells Point underwent a drastic change. As a part of The Virginian Railway Company it was the site of that Carrier's main yard operation where incoming road trains were yarded and outgoing road trains were made up. Oceangoing vessels were loaded with coal from its piers; locomotive and car inspection and repair facilities were maintained there. After the merger, the coal piers and inspection and repair facilities were closed. Further, and most significantly, all incoming and outgoing road trains were handled in the Norfolk and Western Railway's yard facilities rather than at Sewells Point. No road crews are not dispatched from, or relieved at, Sewells Point.

After the merger, Carrier again abolished the three telegrapher positions at Sewells Point and closed the telegraph office there. This was done effective December 9, 1959, and the ORT did not contest the closing. No claim was filed after this second closing.

This claim, and that in Docket No. TE-13199, arise because of telephone messages sent by the yardmaster and yard conductor at Sewells Point—such messages usually being sent to the operator at Carolina Junction, though in a few instances the messages were telephoned directly to the division office in Victoria, Virginia.

In Award No. 4811 we held that since many of the messages required to be filed at Sewells Point were communications of record pertaining, directly or indirectly, to train movements, such was work reserved to the telegraphers and thus the positions could not be abolished. Here Claimants say we have similar facts, while Carrier maintains the messages in the instant claim are those related to intra-terminal movements of switch engines and cars as contradistinguished from the train movements of Award No. 4811.

We think Carrier's contention is valid. A detailed analysis of the messages involved here reveals many distinctions from those in Award No. 4811. There the messages were clearly "OS" reports, consists of trains and delay reports—all related to train movements. In our instant claim we find messages between terminal personnel relating to switching or handling of car movements within the terminal or reports of such movements to division headquarters as yard personnel were required to make. In contrast to the case in Award No. 4811, here we have no showing that such messages have ever been exclusively handled by telegraphers.

Claimants' representative of the Board has urged that we are here concerned with train movements since some of the messages relate not to switch engines or yard engines, but to Extra Trains. The argument is at first bluish persuasive, until we examine the messages relating to extras. In each instance they are from the yardmaster to the operator at Carolina Junction advising how the train is to be cleared through the junction. Both points are wholly within the Norfolk terminal. Under such circumstances the yardmaster has always been able to instruct personnel without the intervention of a third party to transmit the message.

The Claimants have failed to square the facts here with those in Award No. 4811. This leaves us with a general Scope Rule and no proof of a traditional reservation of the work to telegraphers to the exclusion of all other craft. Under such circumstances the claim is without merit.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1966.