

Award No. 15003
Docket No. TE-13753

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Western District)

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYES UNION

(Formerly The Order of Railroad Telegraphers)

NEW YORK CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Western District), that:

1. Carrier violated the Agreement for a period of five (5) days beginning May 22, 1961 to and including May 26, 1961, when it required or permitted Conductor-Pilot A. Massey in charge of tamping apparatus X-3015 while working between JD, LaPorte and Durham, Indiana, to operate switches at Durham, Indiana, and to report his equipment clear of the main track in the same manner that block operator formerly employed at Durham prior to abolishment of the positions did.

2. Carrier shall compensate senior idle extra man, to be determined by a joint check of the company's records, for the five days from May 22nd to and including May 26, 1961, for eight (8) hours at the straight time rate of the Durham, Indiana position. In the event that there were no idle extra operators, Carrier shall compensate the senior regular operator on his rest day, under Article 13, for eight (8) hours on each of the above mentioned days.

EMPLOYEES' STATEMENT OF FACTS: Between May 22 and May 26, 1961, the Carrier operated a tamping apparatus No. X-3015 with Conductor-Pilot A. Massey in charge. This apparatus was working between JD, LaPorte, Indiana and Durham, Indiana and west thereof. The tamper machine X-3015 is a piece of power equipment weighing in excess of four tons and is operated by one man. However, there are two or more track men assigned with this equipment to jack-up rail and manually fork in ballast rock in conjunction with the operation of this equipment. It cannot be taken off the track but must be operated as a train and use its own power to enter a siding or proceed along a main track.

There were two open block stations involved on each side of Durham. To the east was JD, LaPorte, approximately six miles from Durham, and to the

slow speed tracks east of Durham and the removal of all switches at Durham. During the week of May 21, 1961, a particular phase of this work involved the use of units of self-propelled equipment which was in charge of a conductor-pilot. When this equipment moved into and out of the main tracks at Durham and over the main tracks between Durham and LaPorte the conductor pilot handled all ground switches which were hand thrown, including those at Durham and communicated by telephone with Telegraphers at LaPorte interlocker.

This particular portion of the work gave rise to the instant dispute. (Exhibits not reproduced).

OPINION OF BOARD: Prior to March 19, 1961, the occupants of two telegrapher positions at Durham, Indiana, first and second shift operator switchtenders, performed block station duties copying and handling train orders and manually operating ground switches for the movement of trains in and around Durham. After that date, Durham no longer functioned as an interlocking station. The two telegrapher positions were abolished and a switch stand was put in operation.

During the period of five days between May 22 and May 26, 1961, the Conductor Pilot A. Massey, who operated tamping apparatus No. X-3015, handled the hand throw switches at Durham and reported by telephone to the operator at LaPorte that the tamping machine was in the clear.

The Brotherhood contends that the Agreement was violated when Conductor Pilot Massey not covered by the Telegraphers' Agreement, performed the duties of the abolished position.

On the days of the alleged violation, no telegrapher was maintained at Durham nor was one assigned and off duty. Furthermore, the use of the telephone by Conductor Pilot Massey to communicate with the telegrapher at LaPorte for track clearance does not constitute a train order.

Issues similar to that involved in the instant dispute were considered by New York Central Special Board of Adjustment No. 137 in Awards 24, 26, 28, 29, 30, 36 and 37 and the claims were denied. In Award No. 14869 (Third Division) the Board held that it was bound by these awards and accordingly rejected the claim. We concur in these decisions and hold that since no telegrapher was employed at Durham and the work handled was not a train order, the Agreement was not violated.

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 2nd day of December 1966.