



Award No. 15687

Docket No. TE-14650

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES 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 & Hartford Railroad, that:

1. Carrier violated the Telegraphers' Agreement when on September 4, 6, 7, 10, 11, 12, 13, 14, 17, 18 and 19, 1962, it required and permitted Messrs. A. Zerka, A. Grossetti or L. George, employees under the Maintenance of Way Agreement, to handle (receive, copy and repeat) track car orders covering train movements at East Greenwich, Rhode Island.

2. Carrier shall compensate Mr. C. A. Benard, or such employee, extra in preference, who may be found to be available on those dates, the equivalent of one day (8 hours) at the minimum rate of the Providence Seniority District for work performed by employees not covered by the Agreement.

EMPLOYEES' STATEMENT OF FACTS: On the dates shown in the substantive part of the claim, it was necessary that track patrolmen at East Greenwich, Rhode Island, (motor track car operators) secure knowledge and whereabouts of trains in or about the territory they were to patrol and to secure written orders authorizing movement of their motor hand cars on main lines within specified areas and time limits.

In accomplishing the communication service and handling of track car orders, the motor track car operators, at East Greenwich, called the Operator at Kingston (13½ miles west thereof), who in turn cut the Train Dispatcher in on the telephone line. The Dispatcher transmitted the orders directly to the track car operators, and the Operator at Kingston was required to copy the order simultaneously.

Copies of Order Nos. 315 and 301, handled on September 4 and 6, respectively, the first two claim dates, are attached hereto as ORT Exhibit 1.

OPINION OF BOARD: On the dates shown in paragraph 1 of the Claim track patrolmen at East Greenwich, Rhode Island, copied motor car messages that the train dispatcher transmitted to them by telephone and which the operator at Kingston signal station copied simultaneously. Petitioner contends that the transmittal, copying and handling of the messages in this fashion violated the Scope Rule of its Agreement.

The Scope Rule is general in nature. Therefore Petitioner had the burden of proving that on the property here involved Telegraphers had, historically, exclusively handled motor car messages. See Award No. 12356 which sets forth the measure of proof required. Cf. Award No. 13442.

Petitioner herein has failed to adduce any factual evidence of probative value that satisfies the burden. It relies upon our Award Nos. 5431, 8133 and 14301—in which the parties herein were party thereto—as establishing Telegraphers exclusive right to the work. We do not find such a holding in those Awards. We will dismiss the Claim for failure of proof.

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 Claim must be dismissed for failure of proof.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.