

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Arthur W. Devine, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**
(Formerly The Order of Railroad Telegraphers)**NEW YORK CENTRAL RAILROAD**
(Southern District)

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

1. The Carrier violated the Agreement when on December 19, 29 and 30, 1963 and January 7, 1964, it required or permitted trainmen, employes not covered by the Telegraphers' Agreement, to perform train order work at Carlisle Junction and Middletown Yard, Ohio.

2. Carrier shall now compensate A. Richardson for one (1) call or two (2) hours at the time and one-half rate for each of the following dates, December 19, 29 and 30, 1963.

3. Carrier shall now compensate W. M. Young for one (1) call for two (2) hours at the time and one-half rate for January 7, 1964.

EMPLOYEES' STATEMENT OF FACTS: Prior to October 25, 1963, Carlisle Junction was an open telegraph office and the occupant performed duties of handling all communication work including the handling of messages, train orders and reports of record. The Carrier served a ninety day notice in accordance with the Agreement of December 10, 1962 that they would permanently abolish the position of first trick at Carlisle Junction. By letter of July 26, 1963, the Carrier allocated the handling of train orders formerly performed at Carlisle Junction to the telegraphers holding positions at M&C Junction and to the telegraphers handling the position at Bates Point. The Carrier stated:

"All train orders for eastbound trains will be handled at M&C Junction and any orders that would be needed to be handed on for westbound trains will be handed on at Bates Point."

After the issuance of this letter allocating this work to telegraphers on July 26, 1963, the Carrier assigned the handling of train orders in accordance with this agreement, except for the dates in question, namely December 19, 29 and 30, 1963 and January 7, 1964. On these dates the Carrier required or per-

"Extra 5958 East has right over opposing trains on No. 1 track Middletown Yard to Carlisle Junction."

On January 7, 1964, in order to expedite the return of Helper Engine 1672 after helping eastbound CD-6, Claimant Operator Young, working at Bates Point, phoned the following order to the conductor on this helper engine at Carlisle Junction:

"Extra 1672 West has right over opposing trains on No. 2 track Carlisle Junction to M&C Junction."

It will be noted, unlike previous claims progressed under Article 19, that the claimants here are the telegraphers telephoning the train orders to the conductors. It has been the Organization's position in previous cases that proper claimants in such cases were the telegraphers, who stood for and were deprived of copying the train orders.

Claims were progressed through the various supervisory levels, in accordance with the Time Limit Rule, to the level of the undersigned, and were denied on the basis that Middletown Yard and Carlisle Junction are not stations where telegraphers were employed at the time of the claims, as contemplated by Article 19.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim alleges that the Agreement was violated on the dates involved because train service employees received train orders over the telephone at locations where telegraphers were not employed, namely, Carlisle Junction and Middletown, Ohio. The train orders were telephoned to the train service employees on three of the dates involved by telegraphers at M&C Junction, located about one mile west of Middletown and about six and one-half miles west of Carlisle Junction. On the other date involved, order was telephoned by telegrapher employed at Bates Point, located about twenty-five miles east of M&C Junction.

The claim seeks additional compensation for call payments to the telegraphers at M&C Junction and Bates Point, who telephoned the orders. The Carrier advises that no telegraphers have been located at Middletown for at least fifteen years. The last telegrapher position at Carlisle Junction was abolished on October 25, 1963. The Petitioner cites in support of its position Article 1—Scope and Article 19—Train Orders, of the Agreement and excerpt from the Transportation Superintendent's letter of July 26, 1963, addressed to officials of the Organization in connection with the abolishment of the last telegrapher position at Carlisle Junction.

This Board has held in numerous Awards that a scope rule such as the one here involved, which merely lists employees covered and does not delineate work, does not exclude other than telegraphers from receiving train orders. This Board has likewise held that train order rules, such as here involved, apply only at points where telegraphers are employed. See Award 12183 involving the same parties.

So far as the letter of July 26, 1963, is concerned, Carrier contends that it was merely advice to the Organization as to how train orders would be

handled under normal operating conditions following the abolishment of the last telegrapher position at Carlisle Junction; that it did not constitute an agreement, and did not preclude the occasional telephoning of a train order to a crew at a closed station under abnormal conditions. We are inclined to agree with the Carrier in this respect. The record simply does not bear out the contention that the letter constituted a binding agreement restricting the rights of the Carrier to the extent contended by the Organization.

As the letter of July 26, 1963, was at issue in the handling of the dispute on the property, we cannot agree with the argument offered in behalf of the Organization that the Carrier's contention in its submission as to the application thereof constituted the raising of new issues.

Based on the entire record, we find no valid basis for the claim and it will be denied.

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 7th day of June 1968.