



Award No. 17036

Docket No. TE-15789

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

NORFOLK AND WESTERN RAILWAY

(Lake Region)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Norfolk and Western Railway (Lake Region), that:

1. Carrier violated and continues to violate the terms of an agreement between the parties hereto by having trainmen operate the telephone at Franklin Mine for the purpose of copying train orders, blocking trains and handling messages.
2. Carrier shall, because of the violation set out in paragraph one hereof, compensate the first out extra telegrapher, or, if no extra telegrapher is idle, the senior idle regular telegrapher who is observing his day of rest on that date in accordance with the provisions of Mediation Agreement of March 1st, 1962.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Norfolk & Western Railway Company (Lake Region), hereinafter referred to as Carrier, and its employes represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to Union and/or Employes, effective as to rules, February 1, 1952, and as to rates of pay, February 1, 1951, and as otherwise amended and supplemented. Copies of said Agreements are available to your Board and are, by this reference, made a part hereof.

Attached hereto and made a part hereof are three (3) rough sketches of the trackage and locations involved in this dispute, identified as TCU Exhibits 1, 2 and 3. TCU Exhibit No. 1 depicts the Adena, Cadiz and New Athens Branch as it existed prior to December 30, 1963. TCU Exhibit No. 2 is the same branch with yard limits and mile post locations, and Carrier's notice of a change in the yard limit signs. TCU Exhibit No. 3 is a sketch of the same area, together with adjacent trackage and station locations, all of which figure in this dispute.

EXHIBIT K - November 14, 1964 - Letter - General Chairman to Director of Personnel.

EXHIBIT L - November 23, 1964 - Denial of appeal - Director of Personnel to General Chairman.

EXHIBIT M - December 3, 1964 - Letter - Director of Personnel to General Chairman.

EXHIBIT N - December 15, 1964 - Follow-up letter - Director of Personnel to General Chairman.

EXHIBIT O - June 28, 1965 - Rejection of denial - General Chairman to Director of Personnel.

EXHIBIT P - July 26, 1965 - Affirmation of denial - Director of Personnel to General Chairman.

(Exhibits not reproduced.)

OPINION OF BOARD: The question at issue is whether the work performed at Franklin Mine which is the subject matter of this claim is telegraphers' work. At issue is the question of whether we depend on the previously established doctrine that the Organization must prove by a preponderance of credible evidence that the work has been traditionally, historically and customarily performed by the telegraphers so as to vest in that Organization the exclusive right to perform same (see Awards 13222, McGovern, and 16595, McGovern, which involved the same parties and Rule 26.) (see also 13442, Wolf, among others), or whether the Mediation Agreement effective March 1, 1962 had the effect of vesting in the telegraphers the right to all the work described in Rule 26.

"RULE 26.

HANDLING TRAIN ORDERS

It is not the disposition of the Railroad to displace employes covered by this agreement by having trainmen or other employes operate the telephone for the purpose of blocking trains, handling train orders or messages. This does not apply to train crews using the telephone at the ends of passing sidings or spur tracks in communicating with the operator."

"MEDIATION AGREEMENT

In the application of Rule 26 it is agreed when such service is performed on any day by an employe not covered by this agreement (except Train Dispatchers), the following provisions shall apply:

- (A) At a station or location where telegraphers are employed, a call (Rule 5) will be paid to the off-duty telegrapher assigned at that location whose tour of duty is nearest (either beginning or ending) to the time of the occurrence and at one man stations such call shall be paid to the telegrapher assigned thereto.

- (B) At a location where the last remaining telegrapher position covered by the current agreement effective February 1, 1952 has been discontinued or abolished, on or subsequent to February 1, 1952, the first-out extra telegrapher shall be allowed a day's pay (8 hours) at the minimum telegrapher's rate for each occasion, except if two or more occurrences at the same location point are within an eight (8) hour period only one day's pay will be allowed. If no extra telegrapher is idle on that date, then six (6) hours' pay shall be allowed to the senior idle telegrapher who is observing his rest day on that date.
- (C) At a location where a telegrapher position was discontinued prior to February 1, 1952, the first-out extra telegrapher shall be allowed six (6) hours' pay at the minimum telegrapher's rate for each occasion except if two or more occurrences at the same location point are within a six (6) hour period only six (6) hours' pay will be allowed. If no extra telegrapher is idle on that date then six (6) hours' pay at the minimum telegrapher's rate shall be allowed to the senior idle telegrapher who is observing his rest day on that date.
- (D) At a location where a telegrapher position has never been established the first-out extra telegrapher shall be allowed three (3) hours' pay at the minimum telegrapher's rate for each occasion except if two or more occurrences are within a three (3) hour period, only three (3) hours' pay will be allowed. If this occurs on more than three (3) days at any location in any period of seven (7) consecutive days, commencing 12:01 A. M., each Monday, a minimum of eight (8) hours' pay for each day shall be allowed. If no extra telegrapher is idle on that date then payment shall be allowed to the senior idle telegrapher who is observing his rest day on that date.

It is further agreed that the minimum telegrapher's rate for the purpose of applying Articles (B), (C) and (D) of this agreement is \$2.425 per hour.

NOTE: The above provisions shall not apply under emergency conditions defined as follows:

Severe weather disturbances; unforeseen track conditions or obstructions; failure of fixed signals; engine or equipment failures which interfere with the normal operation of trains; unusual delays which could not have been foreseen when train was at previous telegraph office; casualties; accidents; or any unforeseen situations arising where life or property may be in jeopardy requiring immediate attention, which could not have been anticipated when train was at previous telegraph office.

This agreement will become effective as of March 1, 1952, and will continue in effect thereafter subject to the provisions of the Railway Labor Act, as amended.

* * * * *

The Carrier contends that the Mediation Agreement deals solely with compensation to telegraphers when work exclusively performed by them is performed by employes not covered by the Telegraphers' Agreement. We are persuaded that this reasoning is sound. Absent the showing that the work which is the subject matter of this claim is the exclusive work of the telegraphers on this property, we must deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 26th day of March 1969.