

Award No. 19163
Docket No. TE-15028

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND
STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYES
(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 and Hartford Railroad, that:

1. Carrier violated the Telegraphers' Agreement (Article 13) and the Memorandum of Agreement of November 8, 1960, when on July 1 and July 2, 1963, it required or permitted employes not reserved under nor covered by the Telegraphers' Agreement to perform service reserved exclusively and traditionally to employes under the Agreement.
2. Carrier shall now compensate for eight (8) hours at the prevailing pro rata, straight time) rate of the position of operator Signal Station 185 (\$2.6568 per hour), each of the following qualified idle extra or regularly assigned employes available under applicable rules:

J. A. Crowley for work performed between 5:30 A. M. and 1:30 P. M. on July 1, 1963.

A. S. Villa for work performed between 1:30 P. M. and 9:30 P. M. on July 1, 1963.

K. F. Kilburn for work performed between 5:30 A. M. and 1:30 P. M. on July 2, 1963.

W. F. Conway for work performed between 1:30 P. M. and 9:30 P. M. on July 2, 1963.

EMPLOYES' STATEMENT OF FACTS: Signal Station 185 is located at Boston, Massachusetts and is in continuous operation each week from 3:00 A. M. on Monday to 10:00 P. M. on Saturday; and normally closed from 10:00 P. M. on Saturday until 5:30 A. M. on Monday. The regular employes under the Agreement assigned thereto work as follows:

Copy of the Agreement between the parties is on file with your Board and is, by reference, made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: On Sunday, June 30, 1963, a fire occurred at Signal Station 185 in Boston, bringing about damage to the electrical equipment and circuits so that it became necessary to move trains by manual release of lock control for each train movement. It was necessary in addition to "flag" trains by the tower, or, in other words, to give each train a hand flag signal by yellow flag in accordance with the rules.

Trainmen who are not subject to the terms of the Telegraphers' Agreement were used to give the flag signals and the Organization contends that the use of trainmen to perform this work was improper and that the named spare employes in the Statement of Claim, who are under the Telegraphers' Agreement should have been called to perform the work.

The initial claim of Local Chairman Lambert contended also that trainmen delivered clearance cards to trains operating through the interlocking plant. Superintendent Gregg replied to the effect that while trainmen were assigned to handle the yellow flag at no time could a trainman take over the functions of the employes represented by the telegraphers, such as Clearance forms or delivering them to trains.

District Chairman Lambert answered Superintendent Gregg saying in part:

"The Carrier's contention to the contrary notwithstanding, Trainmen Reese and Reese who were assigned the 1:30 - 9:30 P. M. shifts on Monday, July 1, and Tuesday, July 2, delivered clearance cards to the affected trains entering manual block territory. These clearance cards were prepared by the undersigned incumbent who was on duty as regular operator on those dates . . . it was necessary for the operator to entrust delivery of Clearance cards to trainmen who were flagging by interlocking signals."

The clearance card issue was argued by the Organization on the property through the letters of the District Chairman, Carrier was put on notice of this question at the earliest stage, and it is raised again in Employes' Ex Parte Submission. We, therefore, do not concur in the contentions of Carrier that the case before the Board must stand or fall on whether the use of the yellow flag by Trainmen constitutes a violation of the agreement and that the case cannot be decided upon the argument that Trainmen delivered clearance forms.

The record in this case does not persuade the Board that the Carrier violated its agreement with the O.R.T. when it permitted trainmen to give hand signals to train crews moving through inoperative interlocking signals because there was no clear showing in the development of this case that the flagging work belongs exclusively to the telegraphers under the emergent circumstances of this particular case. On the other hand, we feel the Organization proved that Trainmen were used to deliver clearance cards and, since Carrier indicated that the function of delivering clearance cards was a function of the employes represented by the Telegraphers' Agreement, we find there to be a violation of the agreement.

Claimants are therefore awarded sixteen hours pay at the straight time rate of the position of operator, to be divided among them on a pro rata basis.

to compensate for the work improperly given to Trainmen Reese and Reese on July 1 and July 2, 1963, such Trainmen not being covered by the Telegraphers' Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated.

AWARD

The Claim is sustained to the extent and in the manner discussed in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1972.