

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20271
Docket Number CL-20243

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employes
((formerly Transportation-Communication
(Division, BRAC)
PARTIES TO DISPUTE: (
(George P. Baker, Richard C. Bond, and Jervis
(Langdon, Jr., Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brother-
hood (GL-7313) that:

Docket No. 12658

1. Carrier violated the provisions of the Transportation- Communi-
cations Divisions of BRAC agreement when it failed to call and use
the services of Mr. Daddona to perform the duties of block operator
at Waterbury, Connecticut on his relief days October 11, 12, 18, 19,
25, and 26, 1971, account blocking being done by other than our craft.
2. Carrier shall now compensate Mr. Daddona for the time he has
claimed in his original time claim for a total of six (6) days at the
overtime rate of his position as Ticket Agent Operator at Water-
bury Connecticut.

Docket No. 12660

1. Carrier violated the provisions of the Transportation-Communi-
cations Division of BRAC agreement when it failed to call and use
the services of Mr. D. P. Belis to perform the duties of block
operator at Waterbury, Connecticut on his relief days October 8,
15, 22 and 29, 1971, account blocking being done by other than our
craft.
2. Carrier shall now compensate Mr. Belis for the time he has
claimed in his original time claim for a total of four (4) days
at the overtime rate of his position as operator clerk at Water-
bury, Connecticut.

Docket No. 12661

1. Carrier violated the provisions of the Transportation- Communications Division of BRAC agreement when it failed to call and use the services of Mr. L. Bloom to perform the duties of block operator at Waterbury, Connecticut on his relief days October 7, 13, 14, 20, 21, 27, and 29, 1971, account blocking being done by other than our craft.

2. Carrier shall now compensate Mr. Bloom for the time he has claimed in his original time claim for a total of seven (7) days at the overtime rate of his position as Operator Clerk, Waterbury, Connecticut.

OPINION OF BOARD: This claim is predicated on the allegation that the scope of the Telegraphers' Agreement and the train order rule were violated when telegrapher work was improperly performed by employees (conductors) not covered by that Agreement.

Prior to this dispute, the secondary tracks surrounding Waterbury, Connecticut (Watertown, Torrington, and Terryville), were under the control of the telegraph operator at Waterbury. Conductors of trains using a block in this system of secondary tracks obtained or cleared the block by communications from or to the Waterbury operator. Effective October 7, 1971, control of the secondary track system was transferred from the Waterbury operator to the Operator at the Control Station in New Haven, Connecticut, under the jurisdiction of the Train Dispatcher, New Haven. Concurrently, the Waterbury Telegraphers were designated as Metropolitan Region Employees, because their services exclusively pertained to the passenger service between Waterbury and New York City. Telegrapher service at Waterbury was 7a.m. to 11 p.m., seven days per week, both before and after the transfer of the secondary tracks.

from Waterbury to New Haven. After the transfer to New Haven, crews of trains using the secondary track system were required to obtain, or report clear of, the blocks within the system by communications from or to the Operator in New Haven. There is no dispute that train crews (conductors) did make such communications by phone calls to the Operator at New Haven and that a telegraph operator was on duty at Waterbury when the calls were made. (Claim dates coincide with the dates on which conductors made such phone calls.) The parties disagree on the location of the phone used by the conductors, the Employees saying within 100 feet of the Waterbury operator office and the Carrier saying the phone was a wayside phone approximately one-half mile from the office. However, the Employees' Rebuttal states that the phone's location has no bearing on the issue and, accordingly, such location will not be included in our considerations.

The train order rule reads as follows:

"ARTICLE 20 HANDLING TRAIN ORDERS

(a) No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders except in cases of emergency.

(b) If train orders are handled at stations or locations where an employe covered by this agreement is employed but not on duty, the employe, if available or can be promptly located, will be called to perform such duties and paid under the provisions of Article 7; if available and not called, the employe will be compensated as if he has been called."

The Employees contend that Article 20 was violated when, before or after using the secondary tracks, the conductors communicated by phone with the New Haven Operator to obtain, or report clear of, the block; that such phone communications constituted the performance of "blocking service"; and that the herein Claimants should have been used to perform such service.

The phone communications by the conductors do not have the attributes of a train order. The record shows that blocks of the kind involved in this dispute are controlled by the operator of a block station or block-limits station at the entrance of a block; he may give a train or engine "verbal permission to enter one block" or, when authorized by the Train Dispatcher, "will issue Clearance Card (Form K) to a train to pass one or more block-limit stations. (Rule 317, Rules for Conducting Transportation) These procedures, which were used in this case, do not involve a train order and, therefore, the train order rule, Article 20, is irrelevant to this dispute.

As to the alleged scope violation, we note that the term "blocking service" is not an accurate term to describe the phone communications by the train conductors. While this term has been used in some prior Awards to refer to similar phone communications, we believe the leading Award on this general subject, Award No. 6800, places the terminology in better perspective. In pertinent part, that Award states:

"The mere reporting of the position of a train in a given block to the nearest block station is clearly not an infringement upon the telephone work reserved to the telegrapher class. This is the type of communication which before the advent of the telephone would have been given to the operator by a personal trip or messenger. The telephoning of such a report does not constitute blocking of trains because the conductor does not keep a block sheet, nor does he have the right to give a clear block to other trains."

After making it clear that a conductor's communication to an operator in charge of a block does not constitute the "blocking of trains", the Opinion in Award 6800 went on to rule that, in certain circumstances, such a communication was covered by the Telegraphers' Agreement. Consequently, while the conductors' phone calls do not constitute "blocking service", the record does ~~raise~~ the issue of whether the conductors' phone communications to the New Haven Operators was work covered by the Telegraphers' Agreement.

The Employees cite Awards which stem from the "Greenbush Settlement", Award Nos. 6800, 13696, and 17506. The Carrier cites Award Nos. 16304 and 16305. Both parties cite Award Nos. 17501, 17503, 17504, and 17505, each of which sustains claims and denies others. Analytically speaking, the Awards cited by the Employees involve the situation wherein the conductor's communication is made from a phone at station A to an operator at station B; station A is a recognized block station and the communications were made outside of the regular hours of the operator assigned to station A. Thus, the phone communication bypassed station A and the operator at station A was paid a call, apparently on the theory that he should have been called to handle the conductor's need to use the block. The Employees' Awards and the Carrier's Awards are not in conflict, because the Carrier's denial Awards simply hold that such communications, when made at points where no telegrapher is regularly assigned, are not covered by the Telegraphers' Agreement. However, after a careful study of all of these Awards, we conclude that none of the Awards

apply to the facts of this dispute. Here, the critical fact is that the communications were made within the assigned hours of the operators at Waterbury, and the Employees have given no explanation of why the Carrier improperly prevented the Waterbury operators from handling the communications since they were on duty and available to do so. The simple answer to this is that the Waterbury operators, after October 7, 1971, were no longer designated to handle the communications, because they were no longer the operators in control of the blocks. The New Haven operators were in control, and the conductors had no reason to use Waterbury operators as intermediaries in their communications about the blocks with New Haven operators. Before October 7, the Waterbury operators performed duties, and made judgments about the blocks, and based thereon sent appropriate communications to the conductors desiring to use the blocks. After October 7, the New Haven operators performed the same duties, made the same judgments, and sent similar communications. The train conductors did not perform any duties after October 7 that the Waterbury operators performed prior thereto. Indeed, except for the possibility of having spoken directly to the Waterbury operators about using the blocks, as compared with speaking by phone to the New Haven operators, the character of the conductors' communications was the same during Waterbury control of the blocks as it was during New Haven control of the blocks. Thus, we conclude that work (control of secondary tracks surrounding Waterbury) once performed by the operators at Waterbury was transferred to the operators at New Haven. Since the Employees have not challenged this transfer as violative of the Agreement, and since they have not shown that any work previously performed by Waterbury operators was performed by the train conductors subsequent to the transfer, there is no basis on which the claim can be sustained. We shall therefore 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 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

The Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauler
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1974.