

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21946
Docket Number CL-21903

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
(GL-8286) that:

1. Carrier violated the Agreement between the parties when on the dates of June 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29; July 2, 3, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 30, 31; August 1, 2; September 18, 19, 25, 26; October 2, 3; December 18 and 19, 1973, it caused and permitted employees not covered thereby to use a telephone from Baum Boulevard, West Schenley, Pennsylvania, for the purpose of securing location of train information and holding trains for the protection of workmen and equipment of the Mosites Construction Company, and

2. Carrier shall, as a result, compensate the named employees eight (8) hours pay for each date listed as follows:

(a) K. M. Doerschner - June 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29; July 2, 3, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 30, 31; August 1 and 2, 1973.

(b) G. R. Keeney - September 18, 19, 25, 26; October 2, 3; December 18 and 19, 1973.

OPINION OF BOARD: The issue presented herein involves the application of Rule 66 of the June 4, 1973 Clerk-Telegrapher Agreement.

The Mosites Construction Company entered into a contract with the State of Pennsylvania to repair a State highway bridge, located 250 feet above the tracks of the Carrier. The work of the contractor was in no way related to the operations of the Carrier, and there was no necessity for the construction company to have contact with the Carrier in order to perform under the contract with the State.

The Carrier urges that it utilized a trainman (flagman) to advise the Carrier if debris fell onto the tracks from the construction area. It is further asserted that the trainman used the telephone on occasion to determine if a train were approaching, so that he might be more vigilant. The Carrier denies that the use of the telephone was in any way related to the location of trains for the protection of the workmen or equipment of the construction company.

Third Division Award 21786 and the award in Docket No. 87 of Special Board of Adjustment No. 355 are both cited as authority for denial of the claim presented herein.

We agree with the position of the Carrier and the awards cited in reference thereto.

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.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1978.