

SPECIAL BOARD OF ADJUSTMENT NO. 132

PARTIES:

THE ORDER OF RAILROAD TELEGRAPHERS
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 1

STATEMENT OF CLAIM: 1. Carrier violated the agreement between the parties hereto when on February 15, March 1, 7, 8, 10, 12, 13, 16, 17, 22, 23, 24, 26, 27, 28, 29, 30, April 3, 4, and 5, 1951, it caused, required and permitted train service employees not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) train orders at Gauley Jct., West Virginia, which work was and is solely reserved to employees covered by the Telegraphers' Agreement.

2. Carrier be required to permit a joint check of its records to determine the number of violations occurring subsequent to the foregoing dates.

3. Carrier be required to compensate the senior idle telegrapher (extra in preference) for one day's pay (8 hours) on each and every day and date shown above, and all subsequent dates on which joint check of records shows agreement to have been violated.

FINDINGS: On the dates listed in the notice of claim train crews operating on the Carrier's so-called Gauley River Branch, copied train orders at Gauley Junction. The Gauley River Branch is approximately 5.6 miles long and joins the Carrier's Richwood Sub-division at Gauley Junction. Train orders are required before a train can enter the Richwood Sub-division off the Gauley River Branch to proceed eastward to Cowen, a yard from which mine run crews are dispatched to service the Cowen coal fields. The trackage comprising the so-called Gauley River Branch was constructed about 1943 - 1944. There has never been an Operator's position at Gauley Junction, but there was one at a location known as Curtin, which was abolished sometime prior to the July 1, 1928 effective date of the current Agreement.

This case is one of several involving the copying of train orders over the telephone by employees other than those holding seniority under the Telegraphers' Agreement.

The Employees cite Article 1 (the "Scope" Rule), Article 2 (the "New Position" rule), Article 6 ("Seniority"), Article 8 ("Vacancies"), Article 17 ("Basic Day") and Article 35 in support of this claim, and contend that the claims here involved are sustainable under those rules.

The Carrier contends that under Article 35 the copying of train orders at Gauley Junction by the train crews involved was permissible, arguing two alternative theories (1) that there was never a telegrapher's position at Gauley Junction and consequently no operator was "displaced" by reason of the involved train crews having copied train orders at that point (2) that the train orders involved were copied at the end of spur tracks.

Article 35 was amended by Agreement between the parties effective September 24, 1955. It has been stipulated that this claim would close as of that date. The disposition of the claim turns upon the proper application of Article 35 as it formerly read which was as follows:

"It is not the disposition of the Railroad to displace operators by having trainmen or other employees operate the telephone for the purpose of blocking trains, handling train orders or messages, except in bona fide case of emergency. This does not apply to train crews using the telephone at the ends of passing sidings or spur tracks in communicating with the operator."

Article 35 has been cited and considered in a number of Awards of the 3rd Division of the National Railroad Adjustment Board and also by a joint Carrier-Telegraphers' Board which functioned prior to the establishment of the National Railroad Adjustment Board.

It is implicit in Article 35 that the parties have recognized that generally the use of the telephone for the purpose of blocking trains and handling train orders or messages is work embraced within the coverage of the scope rule of the Telegraphers' Agreement, although that work as such is not described in the rule. Further from the language of the rule there is an implied recognition that an occasional minimal amount of such work may be performed by train crews at points where no operators had been previously employed without infringing upon the Telegraphers' Agreement and in a bona fide emergency there would be no restrictions upon train crews in using the telephone for the purposes set forth. Finally, the Article makes clear that train crews may use the telephone with impunity at the ends of passing sidings or spur tracks in communicating with the operator.

The reason for the passing siding and spur track exception in the last sentence of Article 35 is crystal clear. Obviously, it would be most impracticable to station operators at every point on the railroad where passing sidings or spur tracks were located and occasions would arise when train crews would require train orders to come out onto main or running tracks. The Employees have contended that the purpose of the last sentence of Article 35 was to permit members of train and engine crews to call the operator from the end of passing sidings or spur tracks at points where an operator was located so as to enable a train to secure the block to enter the main track again without having to walk from either the passing siding or spur track to the telegraph office to receive the necessary authority or other information. We can agree that that was one of the purposes but not that it was the sole purpose. Obviously, not all spur tracks or passing sidings were located within walking distance of telegraph offices at the time the rule was agreed to. This conclusion is buttressed by the fact that a joint Carrier and Employee Telegraphers' Adjustment Board on this property sustained the position of the Carrier as long ago as 1930 when the Employees complained about the establishment of a one-trick office instead of a three-trick office at Reduction, Pennsylvania, and train crews secured permission to leave a siding and to clear the block to operators at Vista and Layton over a telephone located at the side of the tower building.

The Joint Statement of Facts agreed to by the Carrier's Superintendent and the Organization's Local Chairman (now General Chairman) indicates that from the period February 15, 1951 to and including April 5, 1951 a total of 22 train orders were copied by Conductors of district mine runs working in the area. On eighteen of the dates involved one train order was copied in a twenty-four hour period, on the other two dates involved two train orders were copied. On one of those days one train order was copied at 5:25 A.M., and another at 5:45 P.M. On the other of those days one train order was copied at 4:04 P.M. and another at 4:13 P.M. The typical train orders cited by the Committee indicate that the Conductors received authority to run extra from Gauley Junction to WN Tower after completing their work in the mines on the Gauley River Branch. The fact that 19 of all the orders cited were copied between 4:13 P.M. and 6:53 P.M. would indicate that the purpose for which the conductors called the

operator at WN in practically every instance was to get permission to come out of the mine spur and run from Gauley Junction to WN Tower.

Generally speaking, a spur track is recognized as a track diverging from a main or running track over which no regular service is maintained. It seems apparent that the track diverging off the Richwood Sub-division at Gauley Junction and servicing the mines between there and Laurel Creek would fit into the category. There is little difference between that diverging track and an industrial spur track leading to an industry located some miles off a main track. The fact that since completion of the construction of this trackage in 1943-1944 the Organization made no complaint about this type of communication until 1950 is an indication that there was a mutual recognition of the applicability of the spur track exception. The reasonable and logical interpretation of the working of Article 35 would indicate that it was precisely the type of communication engaged in between the Conductors of these mine run crews and the Operator at WN Tower which the last sentence of Article 35 was designed to permit. As indicated above the conduct of the parties from 1943 to 1950 is consonant with that interpretation. Under the circumstances here present we are impelled to the conclusion that the spur track exception applied and consequently find that there is no basis for a sustaining Award.

AWARD

Claim denied.

/s/ Francis J. Robertson
Francis J Robertson
Chairman

/s/ B. N. Kinkead
B. N. Kinkead
Employee Member (Dissenting)

/s/ T. S. Woods
T. S. Woods
Carrier Member

Dated at Baltimore, Maryland this 23rd day of
April, 1957