

SPECIAL BOARD OF ADJUSTMENT NO. 132

PARTIES

THE ORDER OF RAILROAD TELEGRAPHERS
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 80

STATEMENT
OF CLAIM:

1. Carrier violated the agreement between the parties hereto when on September 2, 6, 7, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22 and 23, and October 3, 4 and 5, 1949, it caused, permitted and required maintenance of way employees not covered by the Telegraphers' Agreement to receive and deliver train line-ups to a tunnel gang working in No. 1 Tunnel, which work was and is reserved solely 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 date shown above, and all subsequent dates on which joint check of records shows agreement to have been violated.

FINDINGS:

On the dates involved in this claim the Carrier's tunnel forces were engaged in the work of widening No. 1 Tunnel. A Maintenance of Way flagman was located about 1500 feet beyond the tunnel to give signals to passing trains. He also received information over the telephone from operators at Bridgeport and MO Tower with respect to train movements for use of the tunnel gang in clearing trains.

Both the Carrier and the employees have cited Article 33 in support of their respective positions on this claim. There is some conflict with respect to what the practice has been under that rule but the weight of the evidence indicates that when the Carrier has performed this type of maintenance and repair work with its own Maintenance of Way forces it has been the practice to assign Maintenance of Way employees to protect the tunnel gangs in the manner indicated above. The language of the Interpretation to Article 33, cited in our Findings in Docket No. 72, would indicate that such was the practice and that the rule was not intended to change it. The phrase "other than railroad construction" would indicate that the parties intended to draw a distinction between situations where the carrier's own forces were engaged in work on its line of railroad and where outside contractors or others were so engaged. In the former situation it appears that the parties contemplated in the Interpretation that Maintenance of Way employees might communicate with the Operator as was done in this instance without violating the Telegraphers' Agreement but if the work were performed by outside contractors or others and this type of information were required for the protection of the working force telegraphers would be employed. Accordingly, in this instance we find no basis for a sustaining award.

AWARD

Claims (1), (2), (3) 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, Md., this
26th day of April, 1957.