

AWARD NO. 31
CASE NO. 31

SPECIAL BOARD OF ADJUSTMENT NO. 306

THE ORDER OF RAILROAD TELEGRAPHERS

VS.

THE NEW YORK, NEW HAVEN & 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:

Carrier violated the agreement between the parties hereto when on November 30, December 5 and 7, 1959 it required or permitted trainmen, employes outside the coverage of the agreement, to handle (receive, copy and deliver) train orders and to perform other services covered by the scope rule of said agreement at Maybrook, N.Y.

Carrier shall now be required to compensate Mr. E. Baudisch, senior available qualified extra employe, or such other extra employe as may be entitled thereto, the equivalent of one day's pay (8 hours) at the rate of the former position of operator at 'BK' office, Maybrook, (\$2.36 per hour). In the event no extra employe is found available the senior qualified regularly assigned employe, on rest, shall be so compensated. This claim to apply to each and every day that such violations continue until the condition is corrected."

FINDINGS:

For many years the carrier, by agreement with L & H, Erie and L & NE Railroads, maintained signal station BK at Maybrook, N.Y. It performed operator service for those railroads and this carrier. On January 19, 1959 the L & H RR notified this carrier that it had no further need for such service. This carrier subsequently moved its communication service to another point in the yard and effective November 27, 1959 abolished the last operator position at BK.

On the dates specified in the claim an L and H conductor used the telephone at BK to contact his dispatcher, instead of using a pole box phone installed by L & H a short distance away. After these claims arose the carrier removed the telephone from BK.

Once the L & H RR terminated the agreement with this Carrier for joint service at BK, this carrier ceased to be responsible for any actions of L & H employes not specifically authorized by it. Certainly there is no evidence here of any such authorization. On the contrary, the provision by L & H of a pole box telephone on its property for the use of its conductor, raises the inference that the actions of its conductors in this case were contrary to the instructions of L & H RR. Under the evidence presented it is not possible to find any liability by this carrier for any of the acts set forth in the claim.

AWARD: Claim denied.

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/s/ Dudley E. Whiting

DUDLEY E. WHITING, REFEREE

/s/ Russell J. Woodman

RUSSELL J. WOODMAN, Employe Member

DATED: June 13, 1961.

/s/ J. J. Duffy

J. J. DUFFY, Carrier Member