

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad that:

1. The Carrier violated the provisions of the Telegraphers' Agreement when and because on the dates and at the locations named in the Organization's Statements of Fact, it arbitrarily transferred the work of operating of switches, signals and train order signals from central points and from employes covered by the Telegraphers' Agreement, which duties theretofore had been assigned to and performed or entitled to be performed by said employes, to persons outside of the Telegraphers' Agreement to a central point, and an around-the-clock remote control operation at Buffalo, New York.

2. The work of operating switches, signals and train order signals by remote control from the central point established in Buffalo in lieu of the previously established points shall be restored or assigned to employes under the Telegraphers' Agreement by bulletining three 8-hour positions (around-the-clock) at Buffalo at an agreed-to-rate of pay in accordance with appropriate rules of the said Telegraphers' Agreement.

3. For a period of 30 days following the first transfer to or the assignment of the work of operating said switches, signals and train order signals to outsiders at Buffalo, which period allows for the bulletining and filling of positions, the three senior idle employes under the Telegraphers' Agreement shall be paid a day's pay on a day-to-day basis for each of said 30 days.

4. The employes eventually assigned to the positions resulting from the bulletins in 3 above, shall, subsequent to a 30-day period following the first transfer, or the assignment of such work to outsiders at Buffalo, until they are placed on such positions, be allowed the difference between what they have earned at other locations and

what they would have earned had they occupied the Buffalo positions plus other allowances enumerated in Article 15, of the Telegraphers' Agreement.

5. A joint check of the records shall be made to determine the payees.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties, referred to herein as the Telegraphers' Agreement, bearing effective date of November 1, 1947, revised July 1, 1953, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The Telegraphers' Agreement lists at Elmira Yard three operator-towermen positions, rate \$1.889 per hour. Prior to on or about June 11, 1948 the switches governing the entry to and departure from Elmira Yard at Water Street were hand-thrown. On or about June 11, 1948 the operation of these hand-thrown switches and signals was connected with a panel located at the west end of the Elmira passenger station. The Organization made claim for but was denied this operation. On December 30, 1948 this entire operation was transferred to Buffalo to be handled by remote control by persons outside of the Telegraphers' Agreement.

At Wayland the Telegraphers' Agreement lists an agent-operator position, rate of pay \$1.9779 per hour. Prior to on or about August 26, 1948 the switches used in entering or leaving the sidetrack at this location were of the hand-thrown type. On or about August 26, 1948 the operation of these switches and signals governing the movement of trains was transferred to Buffalo to be remotely controlled by persons outside of the Telegraphers' Agreement.

At Groveland in 1949 the Telegraphers' Agreement listed three towermen positions, rates \$1.315 per hour and one agent-operator position, rate \$1.42 per hour. The work of handling the train order signals from the tower (central location) was assigned to and performed by the said towermen. On February 2, 1949 the handling of train order signals and the handling of newly installed switches and signals at the west end of the siding was assigned to persons outside of the Telegraphers' Agreement at Buffalo to be handled by remote control. On February 23, 1949 the tower at Groveland was abandoned and the duties of handling switches and signals at the east end of the siding was transferred to the station, a central point for that operation. On August 15, 1951 this east end operation was transferred to the same outside persons at Buffalo to be handled from that central point by remote control.

The Telegraphers' Agreement lists at Bath three positions (around-the-clock operation) viz.: agent-operator, rate \$430.10 per month, 2 clerk-operator positions, rates \$1.823 per hour. On or about August 23, 1949 power operated switches and manually controlled signals were installed at each, the east and west end of the sidings and the operation thereof was assigned to outsiders from a central point in Buffalo to be handled by remote control.

The Organization in all instances claimed the work of operating switches and signals from the central point in Buffalo, but the claims were denied.

POSITION OF EMPLOYES: Prior to Federal control of the railroads, which began January 1, 1918, positions classified as "towerman", or "leverman", or similar payroll classification, had not been in all instances, allocated to Telegraphers' Agreements. In a few instances such positions were not

In other words, the Organization has frankly conceded that whatever cases may be involved in the instant claim should be remanded to the property as were the cases covered by Awards 4768 and 4769.

In Award 5374 this Board said:

"Since 1945 the parties have been afforded two opportunities by this Division to settle the question involved herein through collective bargaining (Awards 2972, 3716), but the controversy remains unresolved. Here we are confronted with a 284 page docket but again, as in the two previous instances, broad, comprehensive findings are sought in settlement of an important overall controversy brought about by the advent of the centralized control traffic system. Such determination is requested upon a record which is hardly representative of general operations on this property. To consider this isolated case upon its peculiar facts undoubtedly would invite further submissions with a result that the Division rather than the parties through collective bargaining, ultimately would evolve rules to govern the parties in connection with CTC operations. Such is not the intended function of this Board."

On this Carrier, too, the Board has left no doubt that it is not the intended function of the Board to evolve rules to govern the parties in connection with CTC operations and that it will not do so. Rather the cases "will be remanded the same as 4768 and 4769" as anticipated by the Organization.

All data in support of the Carrier's position have been handled on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises out of a dispute of long standing on this property over the assignment of certain work involving the operation of a signaling and switching system known as CTC or Central Traffic Control.

The Carrier here has assigned dispatchers to operate a CTC board at Buffalo, N.Y., on an around-the-clock basis; the Organization contends that this work is within the Scope Rule of the Telegraphers' Agreement and that its assignment to dispatchers is a violation of that Agreement.

Similar claims involving the same parties and issues as presented here have been the subject of decisions of this Board in the past. Awards 4768 and 4769, (Referee Stone) rendered in 1950, held that this Board is without jurisdiction to determine claims arising from a dispute as to the proper assignment of this work because we are without authority to resolve jurisdictional disputes, relying on the reasoning and decision rendered in Award 4452 (Referee Carter). The claims accordingly were remanded for negotiation.

The disputes in these Awards subsequently were the subject of negotiations and mediation under the auspices of the National Mediation Board. The parties failed to reach agreement, the disputes were withdrawn from mediation on June 9, 1953, and the issue is again presented to this Board by the Organization on the premise that Awards 4768 and 4769 were dismissal awards predicated on the alleged failure of the Board to comply with the requirements of Section 3, First (j) of the Railway Labor Act, as amended.

We do not agree with this premise. A careful reading and analysis of the aforesaid awards can lead but to one conclusion. The Board there found and held that the dispute is a true jurisdictional one, that the Board may not

resolve such disputes and that consequently we lack jurisdiction of the subject matter. The Board then remanded the matter for negotiation. It may be noted that the Opinion in Award 4768 obviously takes into consideration the merits of the controversy in the light of the applicable agreements or it could not have concluded that a jurisdictional dispute existed. At no place in the Opinion or the Findings is there any reference to a dismissal of the claim based on noncompliance with Section 3, First (j), of the Act.

We find and hold that Awards 4768 and 4769 are controlling here. The issue involved in those cases is the same one we are asked to readjudicate now. The Board, as a matter of law and sound public policy, ought to adhere to the rule of *res judicata*. The law declares "The awards of the several divisions of the Adjustment Board . . . shall be final and binding upon both parties to the dispute . . ." (Section 3, First (m)). This Board itself in Award 6935, (Referee Coffey), enunciated this sound policy when it said:

"If, as we maintain, our awards are final and binding, there must be an end some time to one and the same dispute or we settle nothing, and invite endless controversy instead. The pending claims, having been once adjudicated, are now barred from further Board consideration, and must be denied on jurisdictional grounds."

Under these principles and in view of the decisions heretofore rendered in Awards 4768 and 4769, the Board is without jurisdiction to consider the instant claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board is without jurisdiction to determine the claim.

AWARD

Claim remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 16th day of September, 1958.