

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM.—

"Claim of General Committee of The Order of Railroad Telegraphers, Chicago, Burlington and Quincy Railroad Company, account Agent-Operator and Night Operator at Dayton's Bluff, Minnesota, being displaced by employes other than those included in Scope Rule No. 1, Telegraphers' Agreement. It is the claim of the General Committee that these employes, H. C. Brown, Agent-Operator, and C. M. Hitchcock, Night Operator, be returned to their regularly assigned positions from which displaced and reimbursed any monetary loss sustained thereby, the amount to be determined by a check of the records."

STATEMENTS OF FACTS.—Although this was a joint submission, separate statements of fact were submitted by the parties. The employees stated the facts as follows:

"H. C. Brown, Agent-Operator, and C. M. Hitchcock, Night Operator, were regularly assigned to their respective positions at Dayton's Bluff, Minnesota, having obtained the positions through the exercise of their seniority rights. H. C. Brown was removed from the position he held as Agent-Operator at Dayton's Bluff, March 3rd, 1931. C. M. Hitchcock was removed from the position he held as Night Operator at Dayton's Bluff, July 16th, 1930. Their removal from the positions in question was involuntary and not by choice insofar as they were concerned. During the period of incumbency the Agent-Operator and the Night Operator in addition to their other duties, were required to transmit and receive railroad messages and reports of record. Thereafter, other employes of the railroad, who held no seniority as telegraphers, assumed these duties including the transmitting and/or receiving of railroad messages and reports of record, all of which were handled by the Agent-Operator and the Night Operator theretofore and prior to their having been displaced. The Agent-Operator and the Night Operator, upon being displaced, exercised their seniority elsewhere in accordance with the displacement privilege as provided in the Telegraphers' Agreement." The carrier stated the facts as follows: "The St. Paul freight yard and yard office of the C. B. & Q. R. R. is located at Dayton's Bluff, Minn., approximately two miles south of the St. Paul Union Depot. Oakland Tower is located near the south entrance to the Dayton's Bluff Yard. Three operator-levermen are employed at this Tower and have for many years handled all train orders and clearances for trains leaving Dayton's Bluff. For years, even when we had two operators at the yard office, train orders were issued through Oakland Tower. We have never employed three operators at Dayton's Bluff. Prior to July 16, 1930, one day and one night operator were employed at Dayton's Bluff, whose duties consisted chiefly of clerical work, handling messages and other telegraphic work except train orders. The night operator's position at Dayton's Bluff was abolished July 16, 1930, at which time all telegraphic work on this trick was transferred to Oakland Tower and the rate readjusted on the third trick operator's position at that point, from 66¢ to 71¢ an hour in accordance with provision in the

schedule. The day operator's position at Daytons Bluff was abolished March 3, 1931, and all local telegraphic work on this trick transferred to Oakland Tower, and rate adjusted on second trick operator's position at that point from 66¢ to 72¢, the rate paid at Daytons Bluff. All through telegraphic work was telephoned from Daytons Bluff to our telegraph office in the General Office Building, St. Paul, and handled to outside points from that office. Messages between Daytons Bluff yard office and Oakland Tower have been handled by messenger or telephone subsequent to the changes."

An agreement between the parties bearing effective date September 1, 1927, was placed in evidence, and Rules 1 and 2 of that agreement, as set forth below, were specifically cited as bearing upon the disposition of the dispute.

POSITION OF EMPLOYEES.—The contentions of the employees were stated as follows:

"The Operators at Daytons Bluff transmitted and received messages and reports of record by telegraph which work, duties and responsibilities other employes in the Daytons Bluff office were forced to assume when the Agent and Operators were removed therefrom, the only difference being these messages and reports of record are transmitted and received by telephone instead of telegraph. Therefore, we contend that the changing of the method of transmission and reception of messages from telegraph to telephone does not constitute or justify reclassification, or arbitrary action of the management, whereby jurisdiction is transferred to another class, and that such an Act, if committed is in direct violation of the Telegraphers' Agreement.

"Scope Rule No. 1, of the Telegraphers' Agreement reads as follows:

"The following rules and rates of pay shall apply to positions held by telegraphers, telephone operators (except switch-board operators), agents, agent-telegraphers, agent-telephoners, printer-operators, wire-chiefs, tower-men, levermen, tower and train directors, block operators and staffmen shown in wage scale, who shall be hereinafter considered employes within the meaning of these rules."

"We particularly call the Board's attention to the fact that the terms telegraphers and telephoners are included in the above quoted Scope Rule, which rule defines the jurisdiction of the class of employes represented by The Order of Railroad Telegraphers. Interpretations by Governmental Tribunals wherein the terms telegraphers and telephoners are defined, and the work performed by such employes clearly set forth, will be cited later on in this submission.

"The question as to whether or not other employes at the Daytons Bluff office assumed the work, duties and responsibilities of the agent and operators who were removed therefrom and actually perform telegraph service, i. e., transmit and/or receive messages or reports of record by telephone, in our opinion, deserves and should be given careful consideration by this Board. If it is found they do, the claim of the employes should be sustained; and if it is found they do not, the claim should be denied.

"We assert that it is a fact that other employes in the Daytons Bluff office are transmitting and/or receiving messages and reports of record between the Daytons Bluff office and Oakland Tower, where three operators are employed at present, and which (Oakland Tower) is a distance of approximately one and three-fourths (1¾) miles from the Daytons Bluff office.

"We made a 10 day check of the messages and reports of record handled on the telephone (transmitted and/or received) by and/or between the employes now at Daytons Bluff and the three operators at Oakland Tower, which shows the number of messages and wire reports of records handled for a 10 day period, September 19th, 1935, to and including September 28th, 1935. While this was a slack period, and the number will increase as business conditions improve, it was found by actual check that the total number of messages and wire reports of record sent and received by telephone by the employes now at Daytons Bluff during the ten day period was 1,275 and that they sought from or furnished to the Train Dispatcher information in regard to trains 46 times while the 10 day check was being made. See Exhibit 'B.'

"Daytons Bluff is a way freight terminal for way freights. It has been found expedient, in order to facilitate the work, to telephone to the employees at Daytons Bluff office, work lists, which are reports of record, so as to enable the way freights to do their switching and other work. The train dispatcher also requests information from the employees at Daytons Bluff pertaining to train movements and also gives them similar information on the telephone in regard to time of arrival of inbound trains.

* * * * *

"The carrier in this case contends the positions of the Agent and Operators at Daytons Bluff were abolished or discontinued; whereas, the employees' contention is that the duties of the former Operators in connection with transmitting and/or receiving messages and reports of records were merely transferred to other employees in the Daytons Bluff Office when the Operator positions were declared abolished or discontinued.

"Other employees in the Daytons Bluff office are transmitting and receiving messages and reports of records by telephone and we have cited authority to show that this difference in the method of handling is inconsequential and does not justify such a change as was made at Daytons Bluff. The Operator jobs were not discontinued nor were new positions created, this was a clear case of transferring the handling of messages and/or reports of record from the class of employees we represent (railroad Telegraphers) to other employees in the Daytons Bluff office, and obviously for the reason that the rate of pay for other employees is less than the scheduled rate of pay of the Agent and Operators.

"We concede when there is no longer any work to perform, a job can be abolished; but, so long as there is work to perform, a job cannot be abolished by a mere declaration to that effect. In this particular instance it is clearly shown there is work to be performed and is being performed by the employees substituted for these Operators.

"You will find included in the Telegraphers' Agreement, Page 25, three positions at Daytons Bluff namely, Agent, Day-Operator, and Night-Operator. This signifies that the organization representing Telegraphers was granted jurisdiction of these jobs. The Order of Railroad Telegraphers has not relinquished jurisdiction of these jobs, therefore, the arbitrary removal thereof from the schedule is in violation of the Telegraphers' Agreement.

"Rule No. 2, Paragraph (c) reads as follows:

"'Entering of employees in the positions occupied in the service or changing their classification or work shall not operate to establish a less favorable rate of pay, or condition of employment than is herein established.'

"Rule No. 2, Paragraph (b) reads as follows:

"'Where existing pay roll classification does not conform to Rule 1, employees performing service in the classes specified therein shall be classified in accordance therewith.'

"It is clearly evident that both of these provisions of the Telegraphers' Agreement were violated by the carrier who was a party thereto.

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"The management has complained because the Committee did not immediately after July 16, 1930, and March 3, 1931, raise objections to the changes made. Any delay in doing so is chargeable to the carrier. The carrier was responsible for the changes, had knowledge of them, and should have notified the employees' representatives, but failed to do so. This accounts for the delay.

"These claimants were subjected to displacement from positions they were entitled to under the terms of the Agreement, therefore, restitution is claimed. The carrier is not vested with authority to flagrantly disregard the terms of the contract entered into between it and representatives of the employees, as we contend was done in this case. A contract is a document for the protection of the parties thereto and is intended to afford protection in accordance with the provisions contained therein. These employees should not be deprived of their rights and should not have been subjected to monetary loss, therefore, their request for redress is not unreasonable and should be granted. We respectfully ask the Board to grant them this consideration."

POSITION OF CARRIER.—The contentions of the carrier were stated as follows:

"The two operators' positions at Dayton's Bluff were abolished because they were no longer needed. With three operators located at Oakland Tower, with sufficient time to handle this wire work, there was no good reason then, nor does any exist at the present time, why the work can not all be handled at Oakland Tower and from the General Office. Certainly, there is no rule in the Telegraphers' Agreement prohibiting the management from effecting economies in this manner.

"The Board will observe * * * that more than four years have elapsed since this change was made before any protest was made by the Committee, and if they considered it a violation of the agreement it is difficult to understand why they slept on their rights for this length of time without protest. It is apparent the protest in this case is based upon a hope rather than any rule or understanding.

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"The Board's attention is directed to the Employees' Exhibit 'B,' which is a statement showing the number of times messages and other information was exchanged over the telephone between Dayton's Bluff and Oakland Tower during a 10-day period in September 1935, and Exhibit 'G,' a similar statement showing the number of messages exchanged between Dayton's Bluff and the General Office during a 10-day period in April, 1936. It is difficult to understand wherein there is anything irregular or contrary to the agreement in exchanging information in this manner inasmuch as the operators at Oakland Tower and the General Office receive and transmit the messages and other reports over the wire to all outside points. The practice of telephoning the information to the Tower and uptown office or delivering it by messenger is no different from that in effect in practically every railroad office in the country and does not deprive the operators of any work under their Schedule Agreement.

"If the two operators' positions were reestablished and work transferred back to Dayton's Bluff, under present business conditions, the day operator would not be kept busy with telegraphic work more than 20% of the time and the night operator not to exceed 10% of his time.

"It is the position of the Management that all work formerly handled by the two operators covered in the Telegraphers' Agreement is being handled by Telegraph operators at Oakland Tower and the St. Paul office; that all other work they formerly handled is properly assigned to the yard clerks at Dayton's Bluff in accordance with the Clerks' Agreement and that the Committee's protest is not supported by any rule, understanding or past practice."

OPINION OF BOARD.—It has been held repeatedly by this Board, first, carriers have a right to abolish positions included in agreements when there is no longer work to be performed in those positions, and second, that the removal of work from the scope of agreements by arranging for its performance by employees not covered by those agreements gives rise to violations for which redress may be claimed by and granted to the employees. There appears to be no contention by either of the parties to this dispute in conflict with these holdings. The basic issue here involved is one of facts: whether the telegraphic positions at Dayton's Bluff were actually abolished, the work of these positions being transferred to Oakland Tower and St. Paul; or whether telegraphic service continued to be rendered at Dayton's Bluff, the work of these positions being performed by clerical and other employees not falling within the scope of the Telegraphers' Agreement. This claim, which is based upon the second of these two views of the facts, alleges violations as of July 16, 1930, and March 3, 1931, requesting that the Night Operator and the Agent-Operator who were then incumbents of these posts "be returned to their regularly assigned positions from which displaced and reimbursed any monetary loss sustained thereby." There is no evidence of record that these positions were not abolished in good faith in 1930 and 1931, nor is there any evidence that telegraphic service was being performed at Dayton's Bluff at the time of these alleged violations. On the contrary, it appears that rate increases for the Operators at Oakland Tower were negotiated by the employees subsequent to and on the basis of the abolition of the positions at Dayton's Bluff; that in these negotiations there was express recognition by the employees that the office

at Dayton's Bluff had been closed, that these positions had been abolished, and that the work of these positions had been transferred to Oakland Tower; that the protest which underlies this claim was not made till more than four years later; and that the evidence as to the performance of telegraphic service at Dayton's Bluff relates entirely to 1935 and 1936. Under these circumstances the claim as submitted cannot be sustained. It is unnecessary to decide in this case whether the conditions alleged to exist in 1935 and 1936 constitute a violation of the agreement, for which appropriate redress may be sought, and the award in this proceeding is made without prejudice to the resubmission of the issue on that basis, failing agreement between the parties as to the elimination of the practices by which the employees deem themselves aggrieved.

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 at the evidence, finds and holds:

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 facts of record do not establish violations of the agreement as of July 16, 1930, and March 3, 1931, on the basis of which the particular operators here involved are entitled to be restored to their former positions and reimbursed for any monetary loss sustained by virtue of the abolition of their positions.

AWARD

Claim denied, but without prejudice to the determination of the issue if resubmitted on the basis of conditions prevailing at Dayton's Bluff in 1935 and 1936 and thereafter.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 1st day of February, 1937.