

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM.--

"Claim of the General Committee of The Order of Railroad Telegraphers on the Pittsburgh & Lake Erie Railroad, that the following positions of agent:

"Struthers, freight.
"Monaca, freight.
"Coraopolis, freight.
"Montour Junction, freight and ticket.
"Connellsville, freight and ticket.
"Monongahela, freight and ticket.
"New Castle, ticket.
"Wampun, freight and ticket.
"Beaver Falls—New Brighton, ticket.
"Fallston, freight and ticket.
"Bentley, freight.
"Woodlawn, ticket.
"Wylie, freight and ticket.
"Belle Vernon, freight and ticket.
"Fayette City, freight and ticket.
"Beaver, ticket.
"McKeesport, ticket.
"Elizabeth, freight and ticket.
"Monessen, ticket.
"West Newton, freight and ticket.
"Webster, freight and ticket.

directed to be included in the Telegraphers' agreement by Railway Board of Adjustment No. 3, of the United States Railroad Administration in its Decision in Docket T-934, dated October 26th, 1920, shall be included in the Telegraphers' agreement; and that the following positions of agent, shall also be included in the Telegraphers' agreement:

"Bentley.
"Walford.
"New Castle, freight.
"Ellwood City.
"Beaver Falls, freight.
"Alliquippa, freight.
"Alliquippa, ticket.
"McKees Rocks, freight.
"McKees Rocks, scales.
"Pittsburgh, ticket.
"Homestead.
"Braddock.
"McKeesport, freight.
"Monessen, freight.
"Dickerson Run, scales and station.
"Newell, scales.

and all of them thereafter governed by the rules of said agreement."

STATEMENT OF FACTS.—In their ex parte submission the employees stated the facts as follows:

"Immediately prior to Federal Control a contract of agreement existed between the representative committee of The Order of Railroad Telegraphers and the Pittsburgh & Lake Erie Railroad, effective May 1st, 1916, the scope rule of which read:

"Any employee required to telegraph or telephone in connection with train service in such positions as are shown in the following schedule of rates of pay becomes a party to this agreement. New positions similar to those in the following schedule will be added to it."

"During the period of Federal Control, December 28th, 1917, to February 29th, 1920, the President of the United States, in the time of the war, took over the possession, use, control, and operation of the Pittsburgh & Lake Erie Railroad and lines acquired by lease; and did wholly operate same by the Director General of Railroads, January 1st, 1918, to March 1st, 1920. Effective as of October 1st, 1918, the Director General promulgated an Order known as Supplement No. 13 to General Order No. 27, containing certain rules of working conditions for telegraphers, telephone operators (except switch-board operators), agents, agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators and staffmen, and rates of pay for same, and directed his Federal managers to incorporate same into existing agreements and into agreements reached in the future, on the several railroads under Federal Control.

"As ordered by the Director General, the Federal Manager of the Pittsburgh & Lake Erie Railroad conferred with the above mentioned committee and revised the existing contract of agreement by incorporating into it the rates of pay and rules of working conditions of Supplement No. 13 to General Order No. 27, and made the revised contract of agreement effective as of October 1st, 1918, as he had been ordered to do. As a consequence to this revision, the scope rule of the agreement then read:

"For positions held by telegraphers, telephone operators (except switch-board operators), agents, agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators, and staffmen, the following rates of pay, rules for overtime, and working conditions will govern."

"The committee thereupon made claim for the incorporation into the agreement of all positions of agent coming within the sphere of the revised scope rule. This claim the Federal Manager declined, but did, in accordance with instructions in Supplement No. 13, submit the dispute jointly with the committee to the Regional Director for consideration and recommendation by the Director General. In concluding the schedule negotiations with the committee at this period, the Federal Manager agreed and did append the following understanding to the schedule agreement:

"NOTE.—The railroad and the committee unable to agree as to agencies now classified as supervisory and non-telegraph agencies. This question has been submitted through the proper channel and when decision is rendered schedule will be revised to conform therewith."

"The Director General referred the dispute to Railway Board of Adjustment No. 3, which Board decided the dispute in decision to Docket T-150, dated June 14th, 1919, in line with Interpretation No. 4 to Supplement No. 13 to General Order No. 27, which had in the meantime been promulgated, and was favorable to the committee's contention. The Federal Manager declined to observe this decision.

"The dispute was thereupon again handled with the management by the Committee and as no progress could be made, it was again referred in a joint submission to the Regional Director, in which the twenty-one agencies were specified. This submission followed the same course as the previous one and was again decided by Railway Adjustment Board No. 3 in Decision to Docket T-934, and definitely favorable to the Committee's contention. Again, the railroad which had in the meantime been returned to private management, refused to comply with the decision.

"This dispute has been in a state of continuous handling by the organization since its inception, the services of the Board of Mediation having been invoked and handled to conclusion by the National Mediation Board without being composed.

"(17) The Committee next requested the Management to join them in submitting the dispute to the National Railroad Adjustment Board, which request was declined.

"(18) In February 1936 advice was received that the National Mediation Board had been requested to take jurisdiction over the dispute.

"(19) In April 1936 a Mediator took up the dispute and failing to compose the differences, the National Mediation Board closed its files.

"(20) On April 29, 1936, the Telegraphers' Committee requested us to join them in submitting the dispute to the National Railroad Adjustment Board which request we declined for the reasons set forth [above].

"(21) The National Railroad Adjustment Board is limited in its jurisdiction to the deciding of the disputes 'growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.' (See Section 3, First (i), of the Railway Labor Act as amended June 21, 1934; also Appendix A, Award No. 42, Docket No. TD-38, Third Division, National Railroad Adjustment Board.)

"(22) The dispute here involved is not a grievance within the meaning and intent of the term as used in Section 3, First (i), nor does it involve an interpretation of an existing rule. It plainly and unmistakably involves a request for an extension of the scope rule of the existing agreement, and the adding of thirty-eight positions to the schedule of rates of pay which is contained on Pages 14 and 15 of the present agreement.

"(23) This being a basic matter not covered by the existing agreement, it is a subject not properly referable to the National Railroad Adjustment Board, but clearly comes within the province of Section 5 of the Railway Labor Act as amended June 21, 1934.

"(24) The question at issue having already been handled under the provisions of Section 5 of the Act, and the National Mediation Board having notified the parties that 'It is the judgment of our Board that all practical methods provided in the Railway Labor Act for our adjusting the dispute have been exhausted,' we submit that the legal remedies provided by law have been concluded.

"(25) We urge the Board to dismiss the case for lack of jurisdiction."

OPINION OF BOARD.—Because of the prolonged and complicated character of the dispute here involved, it has been necessary to set forth at length the circumstances and conditions surrounding its development and the numerous contentions of the parties with respect to various aspects of the controversy. Disposition of the claim, however, must necessarily be governed, not so much by the Board's judgment with respect to each of the many subsidiary controversial issues of historical nature with which the record abounds, although all of them possess a greater or lesser degree of relevance, as by its answer to a few major questions which are crucially significant in determining whether the claim of the petitioners can be sustained under the agreement currently operative between the parties. These questions are (1) whether this Board may properly assume jurisdiction of the claim here submitted; (2) whether the positions of "agents" incorporated in the scope rule of the Telegraphers' Agreement must of necessity exclude the positions of "supervisory agents" here subject to controversy; and (3) whether the prevailing agreement between the parties has in fact removed the positions here in dispute from its scope.

(1) Unless this Board may properly assume jurisdiction of the claim here submitted, the merits of the substantive questions at issue are beyond its power of determination. In defining the jurisdiction of this Board, the Railway Labor Act as amended June 21, 1934, provides (Section 3, First, (i)): "The disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of facts and all supporting data bearing upon the disputes." The claim here at issue was submitted by the employes as a dispute growing out of a grievance

involving the interpretation and application of the agreement between the parties concerning rates of pay, rules, and working conditions, and pending and unadjusted at the time of approval of the Act, and this Board must assume jurisdiction thereof and decide the controversy on the merits in light of all the evidence of record. The employees contend that they are not seeking an extension of the terms of the agreement but a proper application of these terms. Whether or not they can support their contention convincingly, and whether or not under the circumstances of record it is within the power of this Board to accord the relief sought by them, are beside the point on the issue of jurisdiction. For the Board to decline to assume jurisdiction merely because the claim sounds as if it involved an extension of the agreement, or because the outcome might be unfavorable to the position of the petitioner, is to pre-judge the issue, to run counter to the express provisions of the Railway Labor Act as quoted above, and to do violence to the entire spirit of the legislation. This Board was established as one of the agencies through which disputes between carriers and their employees might be adjusted, in the interest of maintaining orderly relations between the parties and avoiding disruption of the service, and when such disputes are submitted to it all doubts as to jurisdiction should be resolved in favor of making this machinery of adjustment available to the parties, regardless of whether the authority of the Board, or the award to which its exercise might lead is or is not likely to prove sufficient to compose the differences between the parties or to remove effectively the grounds of complaint. As appears from the preceding recital of the course of this controversy, the issues here involved have been presented, in one form or another, to a number of adjustment and mediation boards; it would be unfortunate if this Board, representing the newest of the governmental agencies designed to deal with such disputes, should on technical grounds decline to assume jurisdiction. We must proceed, then, to the merits of the case.

(2) If the positions of "agents", as incorporated in the scope rule of the Telegraphers' Agreement, must of necessity exclude the positions of "supervisory agents" here in dispute, then it would be unnecessary to determine whether these positions have been in fact removed from its scope. There is no evidence of record in support of such an assumption. Both parties agree that "officials" are not subject to the agreement, but there is no adequate basis for the contention of the carrier that the positions of "supervisory agents" here involved are "official positions" necessarily excluded from the agreement. On the contrary, there is authoritative evidence of record that these positions of "supervisory agents" fall within the class of positions covered by the scope rule of the agreement, since the decisions of Railway Board of Adjustment No. 3 in Docket T-150 and in Docket T-934 expressly and unambiguously supported this view. Furthermore, the Order of the Interstate Commerce Commission of February 5, 1924 in Ex Parte 72 clearly classified agents who may have supervision of one or more other employees as "employees", when in addition to their supervisory duties they are required to perform routine office work, and as "subordinate officials" when their duties are wholly supervisory and they are not required to perform routine office work; only the agents at large and important stations whose duties are wholly supervisory were classified as "officials". The employees properly contend that since the positions of "supervisory agents" here at issue involved the performance of routine office work they are held by "employees"; and they insist, indeed, that even if no such routine office work were performed in these positions, they would still fall within the scope of the agreement, since "subordinate officials" as well as "employees" are subject to the provisions of the Railway Labor Act. If, then, the issue as to the propriety of including these positions of "supervisory agents" were presented merely in terms of interpreting and applying the original agreement, as it was presented to Railway Board of Adjustment No. 3 under the agreement effective October 1, 1918, this Board would be constrained to resolve the issue in favor of the contention of the employees as it was resolved by the earlier Board in Dockets T-150 and T-934. It is because of subsequent developments, rather than because of the inherent character of the scope rule of the agreement as originally established and later continued, that doubt existed as to whether the carrier can appropriately be ordered to include under the agreement the positions of the "supervisory agents" now in controversy. It is necessary, then, to examine the significance of these subsequent developments, with special reference to whether the prevailing agreement between the parties has in fact removed the positions here in dispute from its scope.

(3) When the dispute first arose, under the agreement effective October 1, 1918, the following note was placed in the agreement: "The railroad and the committee unable to agree as to agencies now classified as supervisory and non-telegraph agencies. This question has been submitted through the proper channel and when decision is reached schedule will be revised to conform therewith." Under this note the decision subsequently rendered by Railway Board of Adjustment No. 3 in Docket T-934 was in effect made part of the agreement, and the carrier's refusal to carry out the requirements of this decision constituted a violation of that agreement. The considerations urged by the carrier in justification of its non-compliance with this decision appear to be without merit. What remedies were available to the employees in face of this violation is not disclosed of record, but whatever power of enforcement may have resided in the various agencies then existing, it is clear no such power of enforcing the decision of Railway Board of Adjustment No. 3 in Docket T-934, rendered under an agreement which is no longer operative, has been vested in this Board. While the dispute was subsequently handled by the New York Central System Telegraphers' Board, the United States Board of Mediation, and the National Mediation Board, without composing the differences between the parties, the significant fact is that the agreement effective October 1, 1918, under which the dispute originated, was followed by two new agreements—that effective November 12, 1924, which displaced the earlier agreement, and that effective May 16, 1928, which is now operative—and that neither of these agreements included the so called supervisory agencies here in dispute. Under the Schedule of November 12, 1924 the employees reserved the right of further negotiation with respect to this issue; in the schedule of May 16, 1928, which is now operative, no saving clause whatever appears in the matter of the supervisory agencies in controversy. It is unquestionably true, as contended by the employees, that these positions have never been included in the Telegraphers' Schedule only because the carrier has refused to incorporate them. This refusal, as we have seen, constituted a violation of the agreement effective October 1, 1918; as to the subsequent schedules, it must be taken as an exercise by the carrier of its right to determine what positions shall be covered by its agreement, however unreasonable its refusal to include these supervisory agencies may have been as a matter of policy, and however lacking in good faith its procedure may be regarded in view of the earlier refusal in violation of its agreement. In other words, whatever may have been the situation under the original agreement, it was open to the employees not to join in such agreements as are reflected in these later schedules; in point of fact they did join in them as the minimum upon which the minds of the parties could be made to meet, although deeming themselves aggrieved by the carrier's unwillingness to include the supervisory agencies in dispute. The current agreements contains not only the scope rule, but a list of the agencies and their rates of pay as agreed upon by the parties. The agencies here in dispute were excluded from this list, not because they were non-existent at the time or as a mere matter of accident; they were deliberately excluded, although the subject of controversy for many years, because the carrier was unwilling to accede to their inclusion. Under these circumstances the mere fact that the positions of "agents" do not necessarily exclude these positions of "supervisory agents" is not controlling, the actual scope of an agreement can be made as broad or as narrow as the parties may stipulate. In this case there was no violation of the prevailing agreement, and it is not within the authority of this Board to grant the relief sought, which would extend the scope of that agreement. The grievance of the employees can be removed—and in view of the circumstances of record it is highly desirable that it should be removed—only through negotiation between the parties.

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 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 disclose neither violation of the terms of the prevailing agreement between the parties nor the existence of a grievance which it is within the authority of this Board to remove.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 19th day of February, 1937