

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (WESTERN LINES)**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka & Santa Fe Railway that the three positions of switchtender-telephoner at Pueblo, Colorado, incorporated in the current Telegraphers' Agreement, be bulletined to and filled by employees carried on the Telegraphers' seniority roster of the Colorado Division."

EMPLOYEES' STATEMENT OF FACTS: "The Telegraphers' Schedule lists two switchtender-telephoner positions at Block 2, Pueblo, Colorado, rate of pay 61¢ per hour. Effective 12:01 A. M., September 20, 1931, the employees assigned thereto were removed by the carrier, the positions being immediately filled by employees of the Pueblo Union Depot and Railroad Company. The duties assigned to the positions were unchanged. The Pueblo Union Depot & Railroad Company has been in existence since 1889, and is controlled by railroads entering the city of Pueblo. Jurisdiction thereof alternating at stated periods."

An agreement bearing date of February 5, 1924, as to rules, and January 1, 1928, as to rates of pay, is in effect between the parties.

POSITION OF EMPLOYEES: "The Telegraphers' Schedule, effective January 1, 1928, as to rates, on page 31 of the wage appendix lists:

'Pueblo Block 2, Switchtender-telephoners (2) rate 61¢.'

"Article 23, paragraph (a) of the same schedule reads:

'This schedule shall be in effect as of February 5, 1924, and shall continue in effect until it is changed as provided herein or under the provisions of the Transportation Act, 1920.'

"A Memorandum of Agreement dated January 19, 1928, between the disputant parties reads:

'Effective January 1, 1928, the rates of all employees coming within the scope of the agreement, effective February 5, 1924, with rates revised as of April 1, 1925, shall be increased 3¢ per hour. The foregoing shall be effective January 1, 1928, and shall continue in effect for one year and thereafter until thirty days' written notice of a desire to change is served by either party on the other.'

"It is, therefore, the Position of the Organization that the carrier violated its contract with the organization when it did, on September 20, 1931, declare the positions (The Schedule lists two positions, however, at the time

"In 1931, business conditions and service requirements were such that the Pueblo Union Depot Company found it necessary to rearrange the forces and consolidate the work on certain positions. The work on the two positions at Block No. 2 was involved in these changes and effective September 20th, 1931, the Santa Fe abolished the two positions which had been carried on its payroll from May 1st, 1915, and the Pueblo Union Depot Company took over the handling of the work performed on the property of that Company. There were two Santa Fe employes holding the positions at Block No. 2 prior to September 20th, 1931, and in this change one of them elected to accept service with the Pueblo Union Depot Company and he was permitted to go over to that Company; while the other Santa Fe man elected to exercise his rights on the Santa Fe property and he was permitted to do so. There was nothing irregular in the above handling as the Santa Fe abolished the two positions which had been carried on its payroll and the Pueblo Union Depot Company rearranged the work and the assignments to take care of the service performed on its property and under its jurisdiction.

"It will be noted the change was made on September 20, 1931, and the first we had in the way of a complaint from the Santa Fe Telegraphers was a letter from the Local Chairman dated October 4th, 1936, or five years after the two positions at Block No. 2 had been abolished. It can hardly be claimed that the Telegraphers were not aware of the changes at the time they were made as they occurred at the headquarters point of the Division and with one of the men going to the Union Depot Company and the other exercising his rights on the Division, there can be no question but that the Telegraphers knew of the arrangements when they were made effective, but instead of protesting or raising any question at the time they waited five years and now demand the right to man three positions.

"Paragraphs (h) and (i) of Article V of the Telegraphers' Agreement read as follows:

'(h) The same line of procedure as that followed in the handling of discipline cases will be followed in handling other grievances arising in connection with the application of this schedule.'

'(i) Any grievances to be considered must be presented within thirty (30) days of date alleged to have occurred.'

and under the provisions of the foregoing rules, if there was cause for complaint, which we do not admit, the matter should have been presented within a reasonable time after the occurrence rather than five years later. If the above quoted rules do not apply in a case of this kind, we are at a loss to know when they would apply or what purpose they serve in the Agreement."

OPINION OF BOARD: The principles invoked by the Organization, to the effect that the Carrier may not farm out work the subject of its contract, are not applicable in this case.

There was no farming out of the work.

The carrier is one of the proprietary users of the Union Depot Company. For many years under mutual agreement between the two carriers the Santa Fe furnished the switchtender-telephoners operating the east switches on the Depot Company's property billing that Company for the cost, it in turn dividing it along with other expenses among the owning and using carriers. The Depot Company is a full fledged common carrier under the Railway Labor Act and conducts its own operations in a factual as well as a legal sense.

Upon a rearrangement of the Depot Company's operations by it in 1931, it terminated the arrangement under which the Santa Fe had manned these switches and put its own employes on the work. This was entirely within the legal right of the Depot Company and there was no legal basis upon which the Santa Fe could refuse.

The Santa Fe has no right to operate the Depot Company's property against its will and has no way to force the Depot Company to allow it to.

The claim is, therefore, not well founded.

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 has jurisdiction over the dispute involved herein; and

That the evidence does not sustain the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of May, 1938.