

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka and Santa Fe Railway that: (a) the second telegraph position 'FA,' Santa Fe, New Mexico was improperly abolished and (b) that all employees adversely affected as the result thereof be reimbursed retroactively any monetary loss."

EMPLOYES' STATEMENT OF FACTS: "An Agreement between the parties was effective February 5, 1924, rates of pay being revised as of April 1, 1925. A new agreement has been negotiated effective December 1, 1938. Copies of both are on file with the Board and are here referred to and made a part hereof.

"At Santa Fe, New Mexico, the carrier maintains telegraph facilities at both the freight office (FD) and the city ticket office (FA), the distance between the two being approximately three-fourths of a mile.

"Prior to October 23, 1938 telegraph service was maintained daily except Sundays at the freight office (FD) 7:30 A. M. to 4:30 P. M. with one hour for lunch between 11:30 A. M. and 1:30 P. M. At the city ticket office (FA) telegraph service was maintained 6:30 A. M. to 10:30 P. M. daily, the first telegrapher-clerk being assigned 6:30 A. M. to 2:30 P. M., the second telegrapher-clerk 2:30 P. M. to 10:30 P. M.

"Effective October 23, 1938 the second telegrapher-clerk position at the city ticket office (FA) was abolished, the hours of assignment of the first telegrapher-clerk changed to 9:00 A. M. to 6:00 P. M. daily, with one hour for lunch between 11:30 A. M. and 1:30 P. M. Concurrent with this change the hours of assignment of the telegrapher-clerk at the freight office (FD) were changed to 6:00 A. M. to 3:00 P. M. week-days with one hour for lunch between 11:30 A. M. and 1:30 P. M. and 6:00 A. M. to 8:00 A. M. Sundays.

"Telegraphic communications for and from the freight house (FD) when that telegraph office is closed and no operator on duty, are handled through the city ticket office (FA) while telegrapher-clerk is on duty in that office and either telephoned or carried to and from by messengers. Telegraphic communications for and from the city ticket office (FA) when that telegraph office is closed and no operator on duty are handled through the freight office (FD) while telegrapher-clerk is on duty in that office and either telephoned or carried to and from by messengers."

the telegrapher-clerk in the (FD) Freight Office is the same as the rate established and paid the telegrapher-clerks assigned at (FA) Ticket Office.

"Boiled down the instant claim is simply the contention on the part of the organization that once work is performed on a telegraph position in a particular office, the Carrier is thereafter denied the right to have any part of that telegraph work performed on another telegraph position in another office of communication located in the same city or town, regardless of the fact that by such transfer, the work can be performed more efficiently. In other words telegraph work once assigned or even performed on a position is forever frozen and cannot henceforth be disturbed as long as any part of it exists. Such a position cannot be supported by the provisions of any schedule rule either expressed or implied and is untenable, impractical and economically unsound. The Carrier establishes offices of communication as the needs of the service demand; assigns thereto employees covered by the provisions of the Telegraphers' Schedule to transmit and receive telegraphic communications, but the Carrier reserves the right to say what communications may be transmitted and received at these various offices and rightly so since the efficient operation of the property depends upon such a prerogative.

"The employees have included as a part of their claim in this dispute, an item identified as (b) reading:

* * * that all employees adversely affected as the result thereof be reimbursed retroactively any monetary loss.'

The Carrier submits it has not been informed as to names of the employees the organization feels have been adversely affected by the handling at Santa Fe and can therefore obviously not be expected to make reply to that portion of the claim. Since the organization has not, either in correspondence or otherwise, indicated the names of the employees for whom claim is being made and since payment must necessarily be made to individuals and not positions, the present dispute cannot therefore involve any retroactive payment, as evidence this Board's Award No. 906, Docket SG-803, by Referee Lloyd K. Garrison, which reads together with the last paragraph of the 'Opinion of Board' as follows:

'The claim in this case should be restricted to the employees specifically named therein, since the correspondence shows that they were the only ones discussed in conference.

'AWARD

'Claim sustained with respect only to the employees specifically named therein.'

"Since the schedule rules cited by the Committee in support of their claim actually sustain the Carrier's position in this case and in view of the many inconsistencies contained in the employees' claim it is obvious that it is without foundation and the Board is respectfully requested to render an award denying the claim."

OPINION OF BOARD: If the claim, as submitted, constitutes a request for the restoration of the second telegraph position and for reparation from the time of its abolition, the claim must be denied, since under the rules of the Agreement there are no limitations imposed upon the freedom of the carrier to abolish positions and to reassign the hours of those positions that remain. The only appropriate basis of complaint under the circumstances of this proceeding is that, as a result of the abolition of the second telegraph position and the reassignment of hours, work subject to the Telegraphers' Agreement is being performed by outsiders, which work should in some fashion be restored to telegraphers and reparation made for its improper performance in the past; and there is evidence of record that this

is the real nature of the claim. On this basis, however, it is not entirely clear that the parties resorted to the preliminary conference and negotiation required by the Railway Labor Act and the Rules of Procedure of this Board; and the record as made is not adequate to determine either the fact of violation or its character and extent. Under these circumstances the proceeding will be remanded to the parties to adjust the dispute, as defined herein, through negotiation, without prejudice to its resubmission, in the event of failure to reach agreement, on a record adequate for determination by this Board as to whether, in what manner, and to what extent the Agreement has been violated.

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 mere abolition of the second telegraph position and the reassignment of the hours of the remaining positions did not constitute a violation of the Agreement; and that the record is inadequate to determine the rights of the parties on the basis of the dispute as defined in the Opinion of the Board.

AWARD

The proceeding is remanded to the parties to adjust the dispute as defined in the Opinion of the Board through negotiation, without prejudice to its resubmission, in the event of failure to reach agreement, on a record adequate for determination by this Board as to whether, in what manner, and to what extent the Agreement has been violated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of July, 1940.