

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

George E. Bushnell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: "1. Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement at Susquehanna, Pa., on June 1, 1939, by abolishing the positions of Second and Third Trick Telephone-switchboard Operators at Susquehanna, Pa., and by assigning their work to employees not covered by said agreement, and failing and refusing to assign such work to employees holding seniority rights thereto, under the Clerks' Agreement.

"2. Claim of the employees that positions of Second and Third Trick Telephone-switchboard Operator should be established at Susquehanna, Pa., with rates of not less than \$90.00 per month for Second Trick Operator, six (6) days per week of eight (8) hours per day and \$85.00 per month for Third Trick Operator six (6) days per week of eight (8) hours per day, bulletined and assigned to senior applicants and that such applicants and other employees affected be compensated for all wage loss retroactive to June 1, 1939."

EMPLOYEES' STATEMENT OF FACTS: "Prior to June 1, 1939, there were three (3) Telephone-switchboard Operators employed at Susquehanna, Pa., located on the second floor of the Susquehanna Passenger Station Building.

"On June 1, 1939, the switchboard was moved into the telegraph office on the first (1st) floor of the Passenger Station and the second (2nd) and third (3rd) trick Telephone-switchboard Operators positions rated at \$90.00 and \$85.00 per month respectively were abolished, their duties being assigned to the second (2nd) and third (3rd) trick telegraphers. The crew callers are required from time to time to assist the telegraphers in handling the switchboard."

POSITION OF EMPLOYEES: "Rule 1. (Scope) of the Clerks' Agreement is designed to designate what employees shall be governed by the rules and to insure to such employees that they shall have the right to work ordinarily performed by that class of employees. Such interpretation was established in Award 180, 423 and other awards.

"Rule 2. (Definition of Clerk) of the Clerks' Agreement defines a clerical worker. If an employee performs four (4) hours of Clerical work per day he is a clerk and under the provisions of Rule 1, his position comes within the scope of the Clerks' Agreement and is subject to all the rules of

warrant any additional expense in connection with the use of this switchboard. As a matter of fact, recent checks have developed possibility of other arrangements that would eliminate the telephone switchboard entirely.

"The two positions of switchboard operators on the second and third tricks that were established effective June 20, 1938, were considered temporary pending re-arrangements which were finally made effective June 1, 1939, by moving the switchboard to the first floor and placing the switchboard operator, chief callers and telegrapher-clerks in the same office. On the second and third tricks telephone calls are taken care of by the chief callers, and if he is not available, by the telegrapher-clerks who are available in the same room. This is the arrangement that was originally contemplated and was delayed because of circumstances that intervened, and the switchboard operators who were taken off on June 1, 1939 were merely temporary jobs during the period of revision.

"This claim has been progressed by the employes on the basis that the assigning of work within the scope of the clerks' agreement dated September 1, 1936 to employes not covered thereby constitutes a violation of the scope rule of agreement. The switchboard is handled on the first trick by the switchboard operator, and on the second and third tricks by the chief callers. The second and third trick telegrapher-clerks perform this service during the periods that the chief caller is not available. There is no rule in the clerks' agreement nor in the telegraphers' agreement that restricts telegraphers in performing this work.

"This principle is recognized by the Third Division, and we call attention to the opinion and findings of the Third Division in Award No. 615, assisted by Referee Frank M. Swacker; also the opinion and findings in Award No. 809, of the Third Division, assisted by Referee William H. Spencer.

"This claim should be declined for the following reasons:

- "1. The basis for this docket as progressed by the Clerks is 'That assignment of work within the Clerks' agreement * * * to employes not covered thereby, constitutes a violation of the Scope Rule,' and revolves itself into a question of jurisdiction, and the position by the Railroad appears to be fully supported by previous awards of the Third Division, and attention is directed to Awards Nos. 615 and 809 referred to above.
- "2. The telephone switchboard and the telegraph instruments are now located in the same room at Susquehanna, and likewise the chief caller operates from that room. On first trick, three employes are located therein, namely Telegrapher-Clerk, Chief Caller and Switchboard Operator. On the second and third tricks, where sufficient work is not available to justify these three occupations, the available work is taken care of by Chief Caller and by the Telegrapher-Clerk as necessary.
- "3. This arrangement is not in conflict with the rules of September 1, 1936, but is in accord with past practices under Rules for Telegraphers, now dated January 1, 1939, where reassignments of work or positions of this nature have occurred."

OPINION OF BOARD: The facts involved in the claim as separately stated by the parties cannot be reconciled although the record shows that on October 6, 1939 the parties prepared a joint statement. We quote the last paragraph of that Statement.

"The 2 positions of telephone operator working between the hours of 4:00 P.M. and 8:00 A.M. were abolished and the work formerly handled by them was taken over by the callers and telegraph operators."

Later in the record the effect of this statement is disputed because of the practice in progressing claims with this carrier.

The carrier states that since June 1, 1939, "the second and third trick chief callers handle the switchboard" and "when it is necessary for the second and third trick chief callers to leave the building for short periods, the second and third trick telegrapher-clerks answer the telephone calls."

In reply the employes "emphatically deny that the switchboard work was assigned to and performed by the Chief Callers on the second and third tricks, but it was as stated, assigned to the Telegraphers in the Telegraph office."

Both parties rely on Award 1314 which includes a compendium of other applicable awards.

Much could be said along the line of the reasoning used in Award 615 *as to the effect of the Scope rule and much more about the "ebb and flow" of work from telegrapher to clerk and back to telegrapher. See Award 1314. Because of the disposal we will make of the claim we refrain from such discussion.*

Telephone switchboard work remains at Susquehanna between the hours of 4:00 P. M. and 8:00 A. M. notwithstanding the change in the telephonic equipment and its removal to the telegrapher's office, to which room the callers were also moved.

Switchboard operators are embraced in the Clerks' Agreement and are specifically excluded from the Telegraphers' Agreement.

It has been repeatedly held by this Board that work embraced within the scope of an Agreement may not properly be removed from such Agreement and assigned to employes not subject to its terms. Award 1122.

It is said in Award 1314 quoting from Award 385: "It is well established under collective Agreements of that character here involved that while the carrier is free to abolish positions, such work as remains in connection with these positions must be performed by the class of employes to which the Agreement applies."

This Referee is in complete accord with a statement in an opinion proposed by the employes which he adopts as his own with a minor deletion.

"This case, therefore, turns on whether effective June 1, 1939, the operation of the telephone Switchboard has been performed in whole or in part, by the telegraph operators, employes without the current Agreement, as contended by the petitioner, or whether such work has since been performed by the crew callers as contended by the carrier. If the former is found to be true, under the terms of the current Agreement, (here deleted the words, 'as will later be shown'), the Board must hold that the carrier has violated the current Agreement between the parties. If on the other hand, it is shown that the operation of the telephone switchboard has since June 1, 1939 been performed by crew callers, employes within the scope of the current Agreement, the Board must find that there has been no violation of the Agreement."

Because of the sharp disagreement between the parties on the record and in the briefs, this Referee after more than the usual study and consideration of a record, briefs and cited awards is unable to determine the actual facts with satisfactory accuracy, and additional evidence is required. The facts can only be determined after a joint check.

The matter must be remanded for a joint check as to the work actually performed and by whom, at the Susquehanna office between the hours of 4:00 P. M. and 8:00 A. M. There should also be further negotiations between the parties. If not thus disposed of, the claim in its original or amended form at the option of petitioner may be re-submitted to this Board.

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 case be remanded in accordance with this opinion.

AWARD

Claim remanded in accordance with opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1941.