

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC RAILROAD COMPANY

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: 1. That the Carrier violated the terms of the Telegraphers' Agreement, when, on August 10, 1944, it discontinued the second and third trick telegrapher positions in the passenger station at Claremore, Oklahoma, on the Central operating division and transferred all of the telegraph service of these positions to employees of the St. Louis-San Francisco Railway not under the Telegraphers' Agreement and located in an interlocking tower of the St. Louis-San Francisco Railway at Claremore; and

2. That if this telegraph service is to be performed for the Missouri Pacific Railroad during the hours of second and third trick positions which were improperly discontinued the two positions shall be restored to the Telegraphers' Agreement and the former incumbents of these positions, and those who were resultingly displaced by this improper act of the Carrier, shall be restored to their former positions.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date June 1, 1942, as to rules of working conditions, and January 1, 1946, as to rates of pay, is in effect between the parties to this dispute.

Effective July 1, 1943, three positions of telegrapher were created under the telegraphers' agreement in the passenger station at Claremore, Oklahoma, on the Central operating division, constituting first, second and third trick positions and established continuous telegraph service in this office. These positions were rated in accordance with the terms of the telegraphers' agreement, and were filled by employees from the telegraphers' seniority roster on the Central operating division in accordance with the governing rules of said agreement.

Effective August 10, 1944, the Carrier discontinued the second and third trick telegrapher positions in the Claremore passenger station, and, acting alone, without conference and agreement with the representative Committee, transferred all of the telegraph service of these two positions to employees in the service of the St. Louis-San Francisco Railway at Claremore not under the telegraphers' agreement.

Upon these two positions being discontinued in this manner, the regularly assigned incumbents thereof were removed from their positions causing them to displace junior employees elsewhere with resulting displacements by the junior employees thus affected.

for a period of sixteen years prior to July 1, 1943 when it was temporarily removed to the positions established at the passenger station in order to best meet the requirements of temporary and unusual traffic conditions; the action of the Carrier in returning such work to the employes in the interlocking tower when traffic conditions again permitted such action was in accord with the principles contained in Award 951 and the claim of the employes herein should be denied.

OPINION OF BOARD: The controlling facts are not in substantial dispute. The lines of the Missouri Pacific Railroad Company and the St. Louis-San Francisco Railway Company cross at Claremore, Oklahoma. By a joint contract, dated April 5, 1922, an interlocking plant was constructed at this crossing and is staffed and maintained by the latter railway company. Supplements appear to the contract under dates of March 24, 1923, February 24 and June 22, 1928. The Organization is not a party to these agreements.

Prior to January 17, 1927, the Missouri Pacific maintained three telegraphers' positions at the Claremore passenger station. On that date these positions were discontinued and all the work at that point was thereafter performed by the levermen-telegraphers in the interlocking tower. On July 1, 1943, the Carrier, without conference or agreement with the Organization, established three telegrapher positions at the Missouri Pacific Station at Claremore providing continuous telegraphic service in that office, including train order work. On August 10, 1944, the Carrier abolished the second and third trick positions at the station, without conference or agreement with the Organization, and returned all of the telegraphic services incident to these positions to the interlocking tower, where it had been prior to July 1, 1943. The rate of pay for the positions was agreed upon in conformity with Rule 23 of the Telegraphers' Agreement. The three positions were bulletined July 1, 1943 under Rule 14 (a) of the Agreement. This rule appears in the position of Employes', above. The Carrier gave as its reason for its action in creating the positions, that in the early part of 1943 traffic conditions became congested due to abnormal wartime conditions then prevailing, to the extent that the force stationed in the interlocking plant was unable to handle the telegraph and train order work of both railroads. Confronted with this situation, the Carrier pursued the course, heretofore stated, as the most practical means of solving the problem. Approximately 13 months after these positions were established, traffic conditions were such that the Carrier deemed their continuance no longer necessary. The record is void of any affirmative showing that the Organization entered protest when the work was transferred to the interlocking plant January 17, 1927. When the Agreement between the parties, effective June 1, 1942, was negotiated, the work was being performed in the same manner as it had been for 15 years, the arrangement was continued and the three positions in question were not written therein. In the list of positions as of December 27, 1943, revised March 1, 1944, with reference to wages and rates, in conformity with a court decision, the positions appear on such list.

The Organization's contention is that: The Carrier violated the terms of the Telegraphers' Agreement, when it returned the work to the interlocking plant, relying on Scope Rule 1 (a) and Rule 22 of the Agreement; that the case is one where the Carrier removed work from under the Scope Rule of the Agreement and turned it over to another carrier and by doing so, deprived the employes who have been performing the work, of their right to retain it. In this connection, the Organization concedes the Carrier is not required to maintain a position when the work has decreased to such extent that the remaining work can be absorbed by some other employe under the Agreement at that place, but the Carrier cannot, under the pretext of abolishing a position, turn the remaining work of the position over to employes not covered thereby.

The Organization quotes from Award 1527:

"It is the opinion of the Board that the Carrier violated the Scope Rule of Petitioner when without negotiation or agreement it removed all the telegraph and telephone work from its Crawfordsville, Indiana Station and transferred same to Ames Tower."

The factual distinction in Award 1527 and the instant case is that in Award 1527, on July 1, 1929, three positions of telegraphers were negotiated at Crawfordsville, Indiana. The first and third tricks of these positions were maintained at that station until March 26, 1940, at which time they were transferred to the Ames Tower which was made a train order office. The employees at Ames Tower never previously handled such work for respondent carrier, while in the instant case the employees stationed at the interlocking tower performed the work for 16 years. We have taken cognizance of the other awards cited by the parties, and especially Award 951, upon which both rely as supporting their positions. Each case must be determined upon the facts presented therein with reference to the existing circumstances at the time. As heretofore set out, to meet the requirements of congested traffic made necessary by this country at war, the Carrier created the three positions. This Board, being quasi judicial in character, takes judicial notice of a war emergency existent at the time these three positions were created and the purpose of their creation. Approximately 13 months after the positions were created, the traffic had ceased and the heavy work performed by the telegraphers disappeared with it. As a consequence, with the exception of one trick position, the work was returned where it had been performed for 16 years, and to which there had been no protest entered by the Organization.

The Organization makes further contention that the three positions were bulletined under Rule 14 (a) which applies to permanent positions, while if the positions were of temporary character, Rule 14 (b) would apply. Under the facts and circumstances of this case, we think this latter contention lacks merit.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1946.