

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, AND
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad Company and the Missouri-Kansas-Texas Railroad Company of Texas,

- (a) That the work of positions of car distributors "where the position requires the knowledge of the duties of a telegrapher or the handling of messages by telephone (synonymous terms)" is work covered by the scope rule of the telegraphers' agreement and subject to the terms thereof;
- (b) That the work of positions of car distributor at Franklin, Missouri, Smithville, Texas, and Denison, Texas, covered by the telegraphers' agreement, has been unilaterally removed by the Carrier from the telegraphers' agreement and from employees under said agreement and transferred to employees not covered by the telegraphers' agreement at these three offices; and
- (c) That so long as the work and duties of car distributor as defined by the scope rule of the telegraphers' agreement remain to be performed at Franklin, Missouri, Smithville, Texas, and Denison, Texas, they shall be assigned to and performed by employees under the telegraphers' agreement in accordance with and subject to the terms thereof.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date August 1, 1938, revised September 1, 1947, as to rates of pay and rules of working conditions, is in effect between the parties to this dispute.

The scope rule of the said agreement as adopted January 1, 1927, has not since been changed in any of its terms or wordings in the subsequent revision of August 1, 1928, and September 1, 1947, and embraces positions of:

"Car Distributors where the position requires the knowledge of a telegrapher or the handling of messages by telephone (synonymous terms)"

When the agreement of August 1, 1928, was negotiated the Carrier maintained such positions of car distributor at the following named offices:

Boonville, Missouri
Parsons, Kansas
Muskogee, Oklahoma
Denison, Texas
Smithville, Texas

and these positions of car distributor were incorporated into the agreement of that date.

"Under our Agreement and understanding these positions were established for the purpose of training train dispatchers and this information should have been shown on the bulletin by Mr. Singiser."

From this record it is definitely and positively shown that when the classification of Car Distributor was established November 1, 1927, it was primarily for the purpose of providing a field for the development of train dispatchers and only such telegraphers as desire to qualify as train dispatcher and so indicate will be considered; and that when these positions were restored in 1942 it was for the purpose of training train dispatchers. The positions of Car Distributor were, therefore, not agreed to nor required due to any provisions of the scope or other rules of the Telegraphers' Agreement, and when the need for training telegraphers as train dispatcher disappeared and ceased to exist the position of Car Distributor vanished.

Awards Nos. 255, 556, 1122 and 2988 of the Third Division have been referred to by the Organization in support of this claim, but they were rendered on the basis of agreement rules, facts and circumstances on other railroads and are not comparable or properly applicable in this case. As it was understood and agreed the positions of Car Distributor were created for the purpose of training and qualifying telegraphers as train dispatchers, and the need for continuing that training program has now ceased to exist and is no longer necessary, it is evident those positions have been properly abolished in accordance with the principle established by those awards and not in violation thereof as alleged and contended by the Organization.

The claim is apparently designed to go beyond the agreed understanding that these positions were created for training purposes as train dispatcher, and require the Carrier to employ Car Distributors for the performance of certain duties to the exclusion of train dispatchers and Chief Dispatchers, contrary to the agreed understanding and long established and recognized interpretation of such understanding that has been observed prior to and ever since Car Distributors have been employed or not employed. Such a holding as the Organization is contending for would create a most awkward and impracticable situation and would have the effect of making Car Distributors superior to train dispatchers and Chief Dispatchers in the handling of such duties, instead of subordinate to those positions. Car Distributors, when employed, have never exercised any authority over train dispatchers and Chief Dispatchers, nor issued instructions to anyone over their signature, but have always been under the immediate jurisdiction and tutelage of train dispatchers and Chief Dispatchers. Such a holding would obviously not be in accordance with the agreed understanding that positions of Car Distributor were created for training purposes as train dispatcher and would be directly contrary thereto. It would also not be in accordance with the long established and recognized interpretation of such understanding, both prior and subsequent to the time Car Distributors have or have not been employed and would be directly contrary thereto. Such a holding would broaden and expand the intent, purpose and agreed understanding covering the employment of Car Distributors and would not be in accordance with such agreed understanding, but would be directly contrary thereto. The claim and contention of the Organization in this case are, therefore, not supported by these awards or the agreement rules of the parties involved in this dispute, and based upon the whole record and all the evidence the claim should be denied.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

(Exhibits not reproduced.)

OPINION OF BOARD: The Board is in accord with Section (a) of the claim that the work of car distributors "where the position requires the knowledge of the duties of a telegrapher or the handling of messages by telephone (synonymous terms)" is covered by the scope rule of the Tele-

raphers' Agreement and subject to the terms of said Agreement. However, the record in this case is conflicting and inadequate for resolution of the issue. The following facts should be developed by a joint check, and the case should be remanded to the parties for further consideration and disposition upon the basis of the provisions of their Agreement as applied to the facts and circumstances made subject of claim:

(1) Details of the duties performed by employes other than those covered by the Telegraphers' Agreement prior to the establishment of car distributor positions which thereafter became duties performed by car distributors at the three involved locations.

(2) The details of the duties assigned to and performed by the occupants of the positions of car distributor at the three involved locations prior to the discontinuance of the positions.

(3) What disposition was made of the work previously performed by the car distributors subsequent to the discontinuance of the positions?

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon.

That the Carrier and the Employee involved in this dispute are respectively carrier and employee 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 claim is remanded in accordance with the Opinion.

AWARD

Claim remanded in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of September, 1948.