

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Pittsburgh & West Virginia Railway:

- (1) The Carrier has violated and continues to violate the agreement between the parties when it declared and continues to declare the 8:00 A.M. to 5:00 P.M. Telegrapher position in the "BM" Side Wire office, Rook, Pa., to be a six-day week position, Mondays through Saturdays, and has assigned and continues to assign this telegrapher's duties to an employe not covered by said agreement.
- (2) The Carrier has violated and continues to violate the agreement between the parties when, during the night-time, outside of the assigned hours of the regularly assigned telegrapher in the "BM" Side Wire Office at Rook, Pa., it has assigned and continues to assign telegraphers' duties to employes not covered by said agreement.
- (3) So long as telegraphers' duties are in evidence at "BM" Side Wire Office, Rook, Pa., on Sundays, and during the night-time outside of the assigned hours of the telegrapher in that office, the position shall be declared a 7-day position and such telegraphers' duties that are in evidence at "BM" Side Wire Office, be assigned to employes under the agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of November 1, 1936, governs rates of pay and rules of working conditions, including the Rest Day Rule effective March 1, 1945, as to time and one-half for work on Sundays, Holidays and Rest Days and April 1, 1946, as to other provisions, are in effect between the parties to this dispute.

At page 11 of said Agreement of November 1, 1936, is listed the position of "Telegrapher" Side Wire, Rook, Pa., hourly rate of pay 75c per hour, (progressively increased to \$1.666 per hour). The assigned hours of the "Telegrapher" are 8:00 A.M. to 5:00 P.M., one hour out for meals, Mondays through Saturday. The office in which the Telegrapher is employed is generally designated as "BM" office, and is located in a room adjacent to the Dispatcher's office.

On Sundays, which days no telegrapher is assigned to work in "BM" telegraph office, the Chief Dispatcher fills the position performing all the telegraphic duties, such as handling consists, messages, Yard Reports and

specific "duties which are in evidence" which would necessitate the establishing of this position on Sundays or at times other than the hours now covered by the present assignment. The parties did agree to one Side Wire Telegrapher at this location when the Agreement was negotiated. The Employees are now attempting to obtain an extension of the coverage of the scope of their Agreement through a decision from your Honorable Board. Such an extension of coverage may be obtained only through negotiation.

This is the ruling of your Honorable Board in Award No. 1290, where, in the "Opinion of Board" the following appears:

*"*** It has been the uniform holding of this Board that the scope of an agreement may be made as broad or narrow as the parties may stipulate. Cf. Awards 383, 389, and 1230. It has further been the constant holding of this Board that it cannot make a new agreement for the parties so as to include positions not covered in the agreement the parties themselves have made. Cf. awards above cited and in addition 42, 871, 1079, 1100, 1102, 1116 and 1149."*

The failure to negotiate additional positions at the Dispatchers' Office at Rook, Pa. when the Agreement was signed left any additional positions outside the scope of the Agreement and the establishment of such positions at this time is not within the authority of your Honorable Board.

The Carrier therefore respectfully requests that the claims, (1), (2) and (3), as presented by the Employees, be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The facts and the applicable provisions of the contract are fully set forth in the submissions of the parties, and need not be repeated here.

Objection is made by the Carrier that the claim presented on the property varies from the claim as submitted to the Division in that the claim presented on the property is for assignment to an employee under the Telegraphers' Agreement of the work performed on Sunday which is of the same character as that performed by the telegrapher on week days during the regular assigned hours; while the claim before the Division is a request that the position of telegrapher at the Rook, Side-Wire Office, be made a seven-day assignment. In their essence the claims do not vary; and the submissions of the parties do not indicate any misunderstanding of the nature of the claims. The objection, therefore, that the Board does not have jurisdiction to consider claim (3) must be overruled.

The work over which this controversy arose is the handling of messages, reports and other communications of record to the dispatcher at Rook on Sundays and at night when no telegrapher was on duty in the "BM" office at Rook. The Organization contends that this work was, by the terms of the Agreement with the Carrier, telegraphers' work and they had the exclusive right to perform it. The Carrier contends that the work described in this claim was always performed by dispatchers when the operator in the "BM" office at Rook was not on duty.

The work to be performed by telegraphers is not enumerated in the contract and to determine what the parties intended it to be, recourse must be made to custom, tradition and the practice of the parties. It has generally been admitted that the work of transmitting communications of record relating to the operation of the railroad was the work of telegraphers; but on this property there are several factors that indicate the parties did not intend that the telegrapher in the Rook-Side Wire position would do all the work described in the Exhibits. The Agreement has established three positions for telegraphers at Rook; the Side-Wire position is in addition to these. The Side-Wire position was in existence many years prior to the negotiation of the Agreement of

November 1, 1936; and the dispatchers, for as many as 40 years, have performed the work complained of when the Side-Wire operator was not on duty. Notice should also be taken of the fact that no objection to this was made by the Organization for eleven years after the Agreement of 1936 was entered into; and it was not discussed when the Agreement on March 1, 1945, relating to rest days, was negotiated.

The Side-Wire operator's work is performed at the dispatcher's office, not the telegrapher's office. When the 1936 Agreement was made it provided that the person holding this job would "qualify for train dispatcher".

The dispatchers, previous to modern day inventions at least, used the telegraph in the course of the performance of their work. In the discharge of his duties, the dispatcher required information such as is contained in the train and yard reports described in Exhibits 1 and 2. In general, the reports so described are from telegraphers to the chief dispatcher.

When all the circumstances are considered, we must conclude that the parties did not intend that the telegrapher in the Side-Wire position at Rook would have the exclusive right to all work described in the submissions.

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 facts of record do not show a violation of the Agreement.

AWARD

Claims (1), (2) and (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of July, 1950.