

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
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,

(1) That the Carrier violated the terms of the Telegraphers' Agreement when, on March 11, 1949, it discontinued the third trick telegrapher-clerk position at Coffeyville, Kansas, regularly assigned to W. Atwill, and transferred the work of the position to an employee not under the Telegraphers' Agreement; and

(2) That the position of third trick telegrapher-clerk, the duties of which were not in fact abolished, shall be restored and W. Atwill, the regularly assigned incumbent thereof, shall be restored to his former position, and all employees who were displaced as a result of this improper act of the Carrier shall be returned to their former positions and be reimbursed for all wage loss suffered retroactive to the date improperly displaced.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date September 1, 1947, as to rules of working conditions and amended as to rates of pay October 1, 1948, and September 1, 1949, is in effect between the parties to this dispute.

Prior to March 11, 1949, the station force at Coffeyville, under the Telegraphers' Agreement was constituted as follows:

Agent, not required to telegraph.
1st trick telegrapher, hours 8 A. M. to 4 P.M.
2nd trick telegrapher, hours 4 P. M. to 12 Midnight.
3rd trick telegrapher, hours 12 Midnight to 8 A.M.

All of these positions were incorporated into the said prevailing Telegraphers' Agreement.

The duties regularly assigned to the third trick telegrapher-clerk consisted of the performance of the necessary telegraph and/or telephone service such as the handling of train orders, transmitting and receiving messages and reports of record, the OS-ing of trains, and the handling of United States Mail to and from trains Nos. 23 and 28, selling tickets for those trains, handling baggage for same, preparation of freight waybills for local and

clearly optional with the Carrier and does not require the Carrier to have telegraphers perform that service or endow telegraphers with any contractual right or claim to such work.

The contention of the Petitioner that the Board has held that work once assigned to any craft cannot be transferred to another and the position abolished and that the work itself must disappear before the position can be abolished is too vague, indefinite, uncertain and speculative as to meaning for the Carrier to specifically and intelligently answer. Handling disputes on the property in that manner does not comply with the meaning and intent of the Railway Labor Act, nor the provisions of Circular No. 1 of the National Railroad Adjustment Board, issued October 10, 1934, that all data submitted in support of the employees' position must affirmatively show the same to have been presented to the Carrier and made a part of the particular question in dispute. No data or evidence of any character in support of employees' position has therefore been presented to the Carrier and made a part of the particular question in dispute in handling this claim on the property. The Carrier has no knowledge of and has been unable to locate any awards of the Board to support the employees' contention, and the rules of the Telegraphers' Agreement on this property, as referred to and discussed in this submission, not only refute the contentions of the Petitioner but support the position of the Carrier.

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 facts of this case are highly conflicting and the parties in their respective submissions have made little effort to reconcile them. For that reason, although it is difficult to do so, we shall relate what appears to us, from the record, to be a fair statement of the existing factual situation.

March 11, 1949, the position of third trick telegrapher-clerk at Coffeyville, Kansas, now referred to by the Carrier as third trick telegrapher but recognized in the current Agreement and by the Carrier in correspondence while the claim was being progressed on the property by the title first mentioned, with assigned hours 12:00 midnight to 8 A.M. was abolished and the two remaining positions of telegrapher-clerks on first and second tricks, with assigned hours of 8 A.M. to 4 P.M. and 4 P.M. to 12 midnight were reassigned with hours from 6:30 A.M. to 2:30 P.M. and from 3:30 P.M. to 11:30 P.M. obviously for the purpose of absorbing some of the work of the third trick position.

While the parties do not agree as to the length of time, the record makes it apparent that the third trick telegrapher-clerk position at the Coffeyville office had been in existence as far back as August 1, 1928, the effective date of the Agreement, preceding the current one dated September 1, 1947. It is claimed its regularly assigned work during the major portion, if not all, of that time was as follows:

"Handle train orders, transmit and receive messages and/or reports of records by means of the telegraph or telephone.

Handle United States mail to and from trains.

Check and handle baggage to and from trains.

Sale of all tickets.

Handling of freight waybills for local and through interchange shipments.

Furnish all traffic information to the public.

Report (OS) the arrival and departure of all trains to the train dispatcher by telegraph or telephone."

The Employees assert the duties of the position as heretofore set forth had been so assigned continuously for more than thirty years, during which time a number of contracts had been negotiated, all of which recognized and listed it as an existing telegrapher-clerk position. The Carrier denies the first portion of the Employees' assertion but we note that in one of its submissions in Award 3932 it states that for 48 years on its railroad this character of work (clerical) had been performed under the Telegraphers' Agreement. This, coupled with the fact it is not disputed that effective September 8, 1948, the Carrier assigned a night clerk, not under the Telegraphers' Agreement, to assist the third trick telegrapher-clerk in the performance of work he had theretofore been doing as a part of his assignment, compels the conclusion that at least some of the clerical work claimed by the Employees to have been a part of the duties of the position when it was abolished had been regularly assigned thereto through the years.

In any event it appears from admissions made by the Carrier of record that when it discontinued the position it assigned all of its then existing clerical duties to an employe covered by the Clerks' Agreement and that such of its telegraphers' work as had not been absorbed by its shift of the first and second trick telegrapher-clerk positions was assigned to what it terms joint telegrapher-levermen in the tower at South Coffeyville some four miles distant from the Coffeyville office. The Employees assert, and the Carrier does not deny, that the incumbents of those positions were employes of another Carrier, none of whom were or are subject to the Agreement here in question. In such a situation we must assume and treat that fact as established.

Summarizing, without attempting to detail other convincing circumstances evidencing that the telegraphic work of the involved position had not disappeared but was practically the same as it had been in the past, what has already been stated makes it clear that the Carrier simply abolished the third trick telegrapher-clerk position at Coffeyville and assigned some of its telegraphic and clerical work to persons not covered by the Telegraphers' Agreement.

Much of the Carrier's argument is devoted to the proposition the instant claim was not handled on the property in accord with the spirit and intent of the Railway Labor Act and the rule of this Board providing all data submitted in support of Employees' positions must affirmatively show the same to have been presented to the Carrier and made a part of the particular question in dispute. This contention is founded on the premise that in the claim as presented the Organization merely charged the transfer of the clerical duties of the involved position to another not covered by the Agreement was in violation of its provisions. Conceding the form of the claim was not the best, we note that the last paragraph thereof states: "There is also the question of handling train orders between 2:30 P.M. and 3:30 P.M. and also the third trick." Moreover subsequent correspondence discloses the Organization was claiming the position had been abolished in violation of the Agreement in that its work, both telegraphic and clerical, had been assigned to persons not covered by its terms. More than that, such questions were argued at length in the respective submissions. Under such conditions we are not disposed to deny the claim or even dismiss it on the grounds relied on by the Carrier.

Having determined—as we have—that the record discloses the Carrier took telegraphic work, clearly within the Scope Rule of the current Agreement, from the involved third trick telegrapher-clerk position and assigned it to employes of another railroad, decision of this case is not difficult. The rule that it is a violation of an agreement to abolish a position and then assign the work of such position to employes not covered by its terms is so well

established that it requires no citation of our Awards supporting it. For one decision, particularly applicable because of similarity in facts, circumstances and issues, see Award No. 4698.

The conclusion just announced makes it even less difficult to dispose of the Carrier's final contention. Although the Clerks' Agreement is not before us and therefore not subject to construction, nevertheless with facts and circumstances such as are here involved our decisions are uniform in holding that as between a telegrapher-clerk position to which clerical duties were originally assigned and a clerk's position to which a portion of such duties were subsequently assigned, the telegrapher has the right to the position, including the assumption of its remaining clerical duties, when it becomes necessary to abolish one or the other of the two positions. See Awards Nos. 615, 4477, 4559, 4734, 4735 and 4832.

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 oral hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1950.