

Award No. 5153

Docket No. TE-4952

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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 and the Missouri-Kansas-Texas Railroad Company of Texas.

(a) That the work of positions of car distributors "where 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, Mo., 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 offices; and

(c) That so long as the work and duties of car distributors as defined by the scope rule of the telegraphers' agreement remain to be performed at Franklin, Mo., Smithville, Texas, and Denison, Texas, they shall be assigned to and be performed by employees under the telegraphers' agreement in accordance with and subject to the terms thereof.

EMPLOYEES' STATEMENT OF FACTS: This constitutes a dispute in identical language that was considered by this Third Division of the National Railroad Adjustment Board in Award No. 4114 (Docket TE-4173), dated September 29, 1948, and remanded to the parties with the direction that:

"The following facts should be developed by a joint check, and 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 employees other than those covered by Telegraphers' Agreement prior to the establishment of car distributor positions which thereafter became duties performed by car distributors at the three involved locations.

As to our using a clerk in the Chief Dispatcher's office, that was done in order to have an employe with stenographic ability to assist the Chief Dispatcher in the handling of his reports and correspondence in general.

Yours truly,

/s/ D. C. Dobbins."

It will be noted Mr. Thompson raised the question for the first time regarding service performed by clerk in Chief Dispatcher's office at Smithville, ten years after the understanding of September 26, 1927, regarding employment of Car Distributors, and he acquiesced in the Carrier's interpretation of that understanding when he was advised by Mr. Dobbins the Chief Dispatcher was handling matters pertaining to the ordering of equipment and the clerk was being used to assist the Chief Dispatcher in the handling of his reports and correspondence.

The facts and evidence in Carrier's submission in Docket TE-4173 and in this resubmission definitely and substantially support the Carrier's interpretation of the Telegraphers' agreement and position in this claim regarding employment of Car Distributors and refute the interpretation and position of the Petitioner, but attention of the Division is also invited to Awards 931, 1314, 1593 and 1694 involving similar claims on other railroads and identical principle as in this claim. Awards 931, 1314 and 1593 deal with the question of handling excess duties of Chief Dispatchers. Award No. 1694 deals with the question of handling excess clerical work of Extra Gang Foremen. The Board held in each of these cases that when the excess of such work of Chief Dispatchers and Extra Gang Foremen disappears or vanishes, the position created to handle such excess work may be abolished and the remaining work returned to whence it came. That is the exact situation in the claim covered by Docket TE-4173 and this resubmission, except that the position of the Carrier in this claim is stronger and definitely and affirmatively supported by the agreed interpretations and application of the Telegraphers' Agreement regarding the employment of Car Distributors on this railroad as evidenced by Carrier's submission in Docket TE-4173 and this resubmission.

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: This claim grows out of the continuation of the dispute that was previously before this Board in Docket TE-4173. By Award 4114, this Division remanded the dispute for further consideration on the property in compliance with the terms of the remand.

The Telegraphers' Organization complains of the abolishing of car distributor positions at Franklin, Missouri, Smithville, Texas and Denison, Texas. It is claimed that the work formerly performed by the occupants of these positions has been unilaterally removed by the Carrier from the Telegraphers' Agreement and transferred to others not under that Agreement. The contentions of the Organization are grounded on an understanding made by the Carrier, the Clerks and the Telegraphers, which Agreement was made effective November 1, 1927.

It appears that the work performed by car distributors immediately prior to November 1, 1927, was performed by Chief Dispatchers, Train Dispatchers, Night Chief Dispatchers and Dispatchers' Clerks, the last group being within

the Clerks' Agreement. It is the contention of the Carrier that the positions of Dispatchers' Clerks were created to absorb the overflow or excess work of Dispatchers and that they were subject to termination when the volume of work receded to such a point that the Dispatchers could perform it themselves.

The record indicates that this was the situation existing when the Agreement of November 1, 1927 was made. The Agreement between the Carrier, the Clerks and Telegraphers was as follows:

"Car Distributors. Employees in the telegraph service will be eligible for these positions. Only such as desire to qualify as Train Dispatchers and so indicate will be considered. Where qualification is sufficient, seniority will prevail."

The wording of the Agreement bears out the contention of the Carrier that the Agreement was intended primarily to provide a field to develop train dispatchers. It was intended that these car distributors were to perform the work previously performed by Chief Dispatcher Clerks and, in addition thereto, devote what time they could in training themselves for train dispatcher positions.

The record establishes, we think, that the work performed at the three points in question which the car distributors took over on November 1, 1927, was handling cars and car reports; making of 35, 976, 325, 14 and 22 reports; cutting circulars; making monthly reports, such as Hours of Service, Delayed Car Reports, Detour Reports, Hotbox Reports, etc. This work was performed by Chief Dispatcher Clerks at that time and by Dispatchers prior thereto.

Under all the circumstances here shown by the record, car distributors stood in the same positions as Chief Dispatcher Clerks insofar as the foregoing work was concerned. If the work of Chief Dispatcher Clerks was to assist the Chief Dispatcher with excess work which was subject to the ebb and flow rule, then the car distributors stood in the same position as the Chief Dispatcher Clerks with reference to such work. Consequently, if the work had receded to the point that Dispatchers could perform the whole of it and the training of Dispatchers had become of no consequence to the Carrier at these points, we think the Carrier could properly abolish the positions and the fact that the remaining duties are performed by Dispatchers does not constitute a violation of the rule against the unilateral transfer of the work of one craft to another.

The Organization contends that the work assigned to car distributors was more than excess or overflow work of Dispatchers and, that it was in fact, primary work of Dispatchers. This same contention was made in Docket TD-4097 and not sustained for want of proof. In the Award in that case, Award No. 4011, the claim was denied for this reason. In a previous case, Docket TE-4173, dealing with this same claim, the Award No. 4114, remanded the case for further evidence. In the present appeal to this Board, the evidence on the controlling points remains practically as inconclusive as before. After two appeals, we feel justified in denying the claim because of a want of supporting proof.

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 a violation of the Agreement is not established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of December, 1950.