

Award No. 5253

Docket No. TE-5187

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Robert O. Boyd, Referee.

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on The Kansas City Southern Railway that:

(1) The Carrier violated the terms of the agreement between the parties when, on August 15, 1949, it declared abolished, the second and third trick telegrapher positions in "DO" office, Pittsburg, Kansas, without abolishing the work previously performed on these two positions, and transferred the work of said positions to employes outside of the agreement.

(2) This work shall be restored to the scope of the agreement, and to employes covered by said agreement; all employes improperly displaced as a result of this violation shall be returned to their respective positions and compensated for all monetary losses sustained; and all other employes adversely affected as a result of this violation shall be compensated for all monetary losses sustained.

**EMPLOYES' STATEMENT OF FACTS:** Pittsburg is an important terminal on the Carrier's main line, located 129 miles south of Kansas City, Missouri, and is the Headquarters of the Northern Division. At this point the Carrier maintains offices of Division Superintendent, Trainmasters, Assistant Trainmasters, Chief Train Dispatcher, Train Dispatchers, Mechanical Department, Maintenance of Way Department, Division Engineer, "DO" Telegraph Office, "NY" yard telegraph office and the many other lesser important offices usually found around a main line Division Terminal. All crews of trains, except Conductors and flagmen on through passenger trains, change at Pittsburg.

Prior to August 15, 1949, there were employed under the agreement in "DO" telegraph office at Pittsburg, three seven-day telegrapher wire chief positions covering the twenty-four hour period, whose duties consisted of transmitting and receiving by telephone and Morse telegraph, train orders for all K.C.S. Passenger trains and southbound A.T.S.F. Freight trains, messages and reports for all departments, testing, patching and balancing of all circuits, including train-to-station radio and Carrier systems, and all other duties generally found in a division relay telegraph office.

Effective August 15, 1949, the second and third trick telegrapher-wire chief positions in "DO" telegraph office were declared abolished, and the hours of the first trick fixed at 8:00 A. M. to 12:00 Noon, 1:00 P. M. to 5:00 P. M., seven days per week. The duties formerly performed by the incumbents of the two discontinued positions were transferred as follows:

**SUMMATION:**

Briefly, it is our position that—

- (1) It is Management's right to reduce forces in effecting economies;
- (2) Positions may be abolished and work of such positions transferred to other positions within the scope of the same agreement and that it is not a violation of agreement to so do;
- (3) It is not a violation of Telegraphers' Agreement or Operating rules for Conductor to deliver train orders to the engineer after such orders have been delivered directly to the conductor by a telegrapher;
- (4) It is necessary and proper and not a violation of Telegraphers' Agreement for train dispatcher to send and receive messages and reports which pertain to his work, whether a telegrapher is on or off duty, or whether a position of telegrapher is or is not maintained in such dispatching office;
- (5) It is necessary and proper that a dispatcher operate the "switch-board" to make wire connections and changes in circuits to enable him to properly perform his duties, whether a telegrapher is on or off duty, or whether or not a position of telegrapher is maintained in such dispatching office.
- (6) There has been no violation of the Telegraphers' Agreement in the reduction of two telegrapher positions in "DO" office at Pittsburg, and the transferring of work formerly performed in that office to telegraphers in other offices;
- (7) Dispatchers are not performing any character of service now that they did not perform prior to such change; and
- (8) There is no basis for this claim and that claim should be denied.

We respectfully request that the claim be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Prior to August 15, 1949, the Carrier maintained three seven-day telegrapher wire chief positions on a twenty-four hour period in the "DO" telegraph office at Pittsburg. On that date the second and third trick telegrapher positions were abolished. Thereafter train orders which had formerly been delivered at the 7th Street Station where the "DO" office is located, were delivered from the north yard office to conductors on southbound passenger trains and from the Joplin office to conductors on northbound passenger trains. Engine crews changed at the 7th Street Station, but not the conductors. When orders were issued, the conductor was furnished a copy of the order and clearance card for the engineer going on duty at the station and such were delivered to that engineer by the conductor after arrival in the station.

It is contended by the Organization that this method of handling train orders is in violation of Section 1-3 of the current Agreement; that the Agreement requires that employes under the Telegraphers' Agreement deliver train orders to the conductor and engineer who are to execute them. The Carrier contends that delivery of orders to the conductor for his train is sufficient under the rule.

The Train Order Rule (Section 1-3 of the Agreement) provides that only employes covered by the Telegraphers' Agreement and train dispatchers may "handle train orders". This Board has interpreted the word "handle" to include the work of receiving, copying and delivering train orders (Award 5013, 5087). The rule does not specify what constitutes delivery. We deem the work of delivering train orders is the function of

transmitting such to the person for whom it is intended. That is, such orders may not be handed to others not under the Agreement for future delivery to authorized personnel (Award 5087) or by delivery to a bulletin board to be picked up at some future time (Award 5013). In these cases, delivery was not made directly to the person authorized by the Carrier to receive and execute the orders.

The Carrier here has by its Operating Rule 211 authorized telegraphers to deliver train orders to conductors and enginemen, but when the enginemen are not in the immediate vicinity of the telegrapher's office, then to the conductor. Thus, when the Carrier directed the operators to deliver train orders at the yard office or at Joplin to the conductor for his own train, there was no transgression of the Telegraphers' Agreement. This is not the situation which was present in Award 5087 where the conductor carried the orders to a distant point for execution on a different train, although by the same conductor.

The contention is also made by the Organization that the dispatchers do telegraphers' work when they are testing or patching the telegraph or telephone lines. The submissions do not, however, disclose that the dispatchers have been testing the elaborate telephonic, telegraphic teletype and radio apparatus at the Pittsburg office. The record does show that the dispatchers have been "patching". This operation consists of inserting or removing plugs or jacks from a switchboard at four different times during each twenty-four hours. It is for the purpose of permitting operators or dispatchers to use the line in different directions at the same time. During each twenty-four hour period this particular incident is performed, twice when the telegrapher is on duty and twice when no telegrapher is at hand. From the record here we must find that "patching" is as incidental to the work of dispatchers as it is to telegraphers and when so performed by dispatchers, is not a violation of the Scope Rule of the Telegraphers.

Since two of the telegrapher positions were abolished at Pittsburg, the Organization contends that the chief dispatcher and train dispatcher, whose office is adjacent to the "DO" telegraph office, have been transmitting and receiving reports and other communications formerly handled by telegraphers. The Carrier answers that the telegrapher on duty from 8:00 A. M. to 5:00 P. M. is handling the work of telegraphers at this station, and that the messages referred to by the Organization are the occasional messages that have always been handled by dispatchers in connection with their work.

It is well settled that no employes other than those included under the Telegraphers' Agreement may perform the service traditionally and historically belonging to the employes embraced therein, without incurring a violation of the Agreement. The problem is whether the messages described in this submission have been traditionally and historically the exclusive work of the telegraphers. The Carrier admits that the work of transmitting certain messages and reports have been handled by the dispatchers, but it claims that such has been the case since 1905. The General Chairman in his letter of November 12, 1949, admitted that "Chief Dispatchers do get on the wire occasionally and ask about a car or secure some information that they have to get quickly, but this thing of sitting down and sending messages daily and in quantity is something unheard of before." From the number of examples cited in the submission, it appears that more than an occasional message, report or instruction has been sent by dispatchers after the assigned telegrapher went off duty. The Carrier in answer to this asserts that it has always been so on this property. But continued violation of the Scope Rule of the Agreement does not result in an amendment to the rule. We have concluded that in an absence of a showing that the work of the dispatchers in transmitting messages and reports incident to their work was not increased after the two telegrapher jobs were abolished, that, in fact, when these positions were abolished, work remained and it was assigned to persons outside of the Scope of the Telegraphers' Agreement.

The contention is made that the positions in the "DO" telegraph office at Pittsburg were negotiated into the Agreement between the parties, and

they could not be abolished without negotiation. The contract does not support this contention. The wage scale—Paragraph 7-20—which lists the positions with which we are here concerned, states: "Following is wage scale to be applied to positions listed, if and when positions are filled." This provision of the Agreement does not require the Carrier to maintain the disputed positions; but it does not permit the Carrier to assign telegraphers' work to persons not covered by the Scope of their Agreement.

The claim requests restoration of the positions. It has long been settled that this Board is without authority to direct the Carrier in what manner it will comply with the Agreement.

The record indicates that the violation of the Scope Rule of the Telegraphers' Agreement occurred during the hours of the second trick telegrapher. The Carrier will, therefore, reimburse the person entitled under the rules to this work from the 15th of August, 1949, until the record shows that the work of transmitting messages and reports by dispatchers does not exceed that which was done by dispatchers when the three tricks were employed.

**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

The facts of record show a violation of the current Agreement.

#### AWARD

Claims (1) and (2) sustained to the extent and 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 9th day of March, 1951.