

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile & Ohio Railroad,

(1) that the Carrier violated and continues to violate the scope rule of the Telegraphers' Agreement, when during October, 1942 it abolished the day operator-clerk position, hours 6:30 to 3:30 P. M. with one hour for lunch, in the Tuscaloosa, Ala., train dispatcher's office and unilaterally transferred all of the work of the position to an assistant chief train dispatcher and later to the trick train dispatcher, not under the Telegraphers' Agreement, in the same office; and

(2) that if the Carrier elects to continue to require the performance of the transmitting and/or receiving of messages and/or reports of record by telegraph or telephone in the Tuscaloosa train dispatcher's office, it shall be performed by and assigned to employees under the Telegraphers' Agreement in accordance with the rules of said agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date March 1, 1929, as to rules of working conditions, revised September 1, 1949, as to rates of pay, is in effect between the parties to this dispute.

For a number of years prior to February 1, 1923, the Carrier maintained a day telegraph position under the Telegraphers' Agreement in the train dispatchers' office at Tuscaloosa, Ala. At some time between the years 1923 and 1930, the carrier abolished the day telegraph position in the train dispatchers' office at Tuscaloosa, Ala., and unilaterally transferred all of the work of the telegraph position to an assistant chief train dispatcher, not under the Telegraphers' Agreement, in the same office.

On August 28, 1942, the Carrier reestablished the day telegraph position in the Tuscaloosa, Ala. train dispatchers' office, hours 6:30 A. M. to 3:30 P. M. with one hour for lunch, and filled the position with an employee under the Telegraphers' Agreement.

About two months subsequent to August 28, 1942, the Carrier again abolished this telegraph position and again unilaterally transferred all of the work of this position to an assistant chief train dispatcher and later to the trick train dispatchers, not under the Telegraphers' Agreement, in the same office.

The Carrier has declined to restore the telegraph position.

parties to the agreement specifically omitted any reference to a telegrapher's position at Tuscaloosa. At the time this agreement was negotiated the dispatchers at Tuscaloosa were performing the same duties as the employees now claim violate the agreement.

For approximately three months during 1942 a telegrapher was employed to assist the dispatchers at Tuscaloosa. During the time the telegrapher was employed the Carrier was in the process of moving its main line at the request of the U. S. Government to allow for the construction of the government air base known as Maxwell Field. Because of the heavy demands brought about by war traffic this move was made with as little interference as possible to train operations.

The Employees have seized upon the fact that during this unprecedented period of three months an operator was employed at Tuscaloosa to assist the train dispatcher, and have presented this claim alleging a violation of the scope rule of the Telegraphers' agreement. They assert that all transmitting and/or receiving of messages and/or reports of records by telegraph or telephone in the Tuscaloosa train dispatcher's office shall be performed by and assigned to employees under the Telegraphers' agreement. This contention is made notwithstanding the fact that the agreement very specifically provides in Article 1 (c), above-quoted, that train dispatchers, as well as operators, shall be required or permitted to do telegraphing or telephoning in connection with the movement of trains and also notwithstanding the fact that the scope rule of the agreement only has application to certain positions "specified in wage scale". As pointed out, the wage scale does not specify a telegrapher's position at Tuscaloosa.

The Employees are in error in presenting their claim when they refer to certain work being referred to an assistant chief train dispatcher and later to a trick train dispatcher. There is no basis for such a statement.

The Employees are attempting by a presentation of this case to require the Carrier to establish an unnecessary position of a telegraph operator at Tuscaloosa, a position that has not existed (except for a very few months) for more than 25 years, during which time the current agreement was negotiated.

For the reasons herein set forth the Carrier respectfully requests that this claim be declined.

(Exhibits not reproduced.)

OPINION OF BOARD: Since this matter was first processed on the property, the Petitioners have modified their claim from one for reparations to a request for an order commanding the Carrier to assign at the Tuscaloosa dispatcher's office an employee under the Telegraphers' Agreement to perform work covered by the Scope Rule of their current Agreement. Article I, the Scope Rule, is as follows:

"(a) The following rules and rates of pay shall apply to all telegraphers, telephone operators (except switchboard operators), agents, assistant agents, ticket agents, assistant ticket agents, agent-telegraphers, agent-telephoners, towermen, levermen, block operators and staffmen, specified in wage scale, who shall hereinafter be referred to as employees coming within the meaning of this agreement.

* * * *

(c) No employees, other than those covered by this agreement and train dispatchers, shall be required or permitted to do telegraphing or telephoning in connection with the movement of trains, except in bona fide emergency cases."

The controversy arises from the contention of the Organization that the Carrier is violating this Rule by permitting dispatchers at Tuscaloosa to

perform work which is, by the Agreement, reserved to telegraphers. The Carrier answers this contention by asserting that the Agreement does not give the telegraphers the exclusive right to perform this disputed work at Tuscaloosa.

The character of the work which is the subject of this dispute is the *transmission of certain communications, examples of which are set forth in the Petitioners' submission*. An examination of these examples discloses that they are messages reporting various types of information, but none of them appear to be communications connected with the movement of trains. In other words, messages of the type cited would not affect, in the sense of controlling and directing, the movement of trains. The work does not, therefore, fall within the provisions of Article I (c) of the Agreement. The messages, however, appear, in the main, to be communications or reports of record, the transmission of which is generally understood to be work reserved to the employees covered by the Telegraphers' Agreement.

The question now arises whether the parties intended to give to those under the Telegraphers' current Agreement the exclusive right to perform the kind of work described in the submission.

In Award 4018 the Board determined that at positions specified in the Agreement the telegraphers had the exclusive right to perform all work not connected with train movements which had by practice and custom long been recognized as telegraphers' work. We are here concerned with similar work at a position not currently specified in the Agreement.

In the 1916 Agreement there was one position of dispatcher-telegrapher specified for the dispatcher's office at Tuscaloosa. This position continued to be specified and filled under the Telegraphers' Agreement until in 1923 the Carrier abolished it. When the position was abolished, the Organization asserts, there was no telegraphy work remaining. The Carrier asserts that the dispatchers took over the work remaining which was identical in character to the work which is the subject of this dispute. When the current Agreement was negotiated, the position of dispatcher-telegrapher at Tuscaloosa was eliminated. There is no record in the submissions of any protest or controversy regarding the work here involved at this position from 1923 until after the temporary position in 1942 was created and terminated.

The Scope Rule of the current Agreement does not define the work covered. But as the subject matter of the entire employment Agreement is work, recourse to the customs and practices of the craft involved may be had to ascertain the intent of the parties. Or, in other words, we have often said that telegraphers shall do all of the work customarily and historically performed by telegraphers, and terms of the Agreement serve only to limit or expand this fundamental conception.

The parties to the current Agreement have related the scope of work covered to positions specified in the wage scale. We do not mean by this that telegraphers have a right to telegraphers' work only at such places because Article III (b) specifies that work performed of a character mentioned in the Scope Rule shall be so classified. The contract must be taken by its four corners and all provisions construed to give each the effect intended. Thus at the time, 1929, when the current Agreement was negotiated, the parties then intended that Article I, the Scope Rule, would relate to all the positions then existing and enumerated: and when work reserved by the Scope Rule to telegraphers developed at other places, it would, by virtue of Article III, belong to the telegraphers. Whatever the effect, the parties intended to cover the situation as it existed in 1929, and its provisions are referable to the situation then existing.

The parties are in disagreement as to the existence or non-existence of telegraphers' work at the dispatcher's office in 1929 when the current Agreement was negotiated. If, as the Carrier asserts, telegraphy work was then being done by dispatchers of the same character and volume as is now

being performed, we must conclude that the parties so intended to limit the telegraphers' exclusive right to the work at Tuscaloosa. Long acquiescence strengthens this belief. On the other hand, if there was no work existing for telegraphers at Tuscaloosa in 1929 other than work incidental to the movement of trains, such conclusions cannot be drawn.

In other words, if the work now being done is the same, generally, as was being done in 1929 by dispatchers at Tuscaloosa, the Organization has no claim; but if it is substantially different in character and volume from what it was in 1929, the telegraphers are entitled to it under their Agreement. Because the parties are not in accord on this essential fact, we must remand the matter to them.

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 are insufficient upon which to base an award.

AWARD

Claims shall be remanded to the parties for a determination of the facts as to the present character and volume of work claimed by Petitioners to be telegraphers' work as compared to such work, if any, performed by dispatchers at Tuscaloosa in 1929, and if it is the same in character and volume, the claims are denied; if the work differs and is greater in volume, the claims are sustained.

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.