

Award No. 5410

Docket No. TE-5293

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Glenn Donaldson, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Illinois Central Railroad Company:

(a) That the work of the performance of the duties and responsibilities of transmitting and receiving messages and/or reports of record, either or both, required to be performed by means of a mechanical message machine (teletype) in the Assistant Freight Traffic Manager's office, Birmingham, Alabama, is work covered by the Telegraphers' Agreement and shall be performed by employees under said agreement.

(b) That the Carrier in requiring or permitting employees not under the Telegraphers' Agreement to continuously perform such work in the Assistant Freight Traffic Manager's office at Birmingham since November 17, 1947, is in violation of said agreement.

(c) That the senior available idle employee covered by the Telegraphers' Agreement who could have been used to perform such work at Birmingham since November 17, 1947, during the hours of the day and night such work was performed by employees not under said agreement, shall be compensated for this work of which they have been improperly deprived since that date; and

(d) That if the Carrier elects to continue the performance of such work at Birmingham the necessary number of positions under proper classification required to meet the needs of the service shall be established and filled under the governing rules of the Telegraphers' Agreement.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of June 1, 1939 is in evidence, hereinafter referred to as the Telegraphers' Agreement; copies thereof are on file with the National Railroad Adjustment Board.

The Scope Rule of said agreement embraces all positions of "mechanical message machine operators who transmit telegrams between points not within one terminal."

Effective November 17, 1947, the carrier installed a mechanical message machine (teletype) in the office of the Assistant Freight Traffic Manager at Birmingham, Alabama, for the purpose of transmitting and receiving messages to and from off-line traffic offices at Atlanta, Ga., Jacksonville, Tampa,

mitted by messenger or mail, that we properly have jurisdiction over those jobs.

If in the hearing of this case you can develop this line of jurisdiction, we should cooperate with the telegraphers to retain the work properly belonging to their members.

Sincerely and fraternally,

George M. Harrison
Grand President

cc—Mr. E. J. Manion, Pres.
Order of Railroad Telegraphers."

The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees have also served notice on this Carrier under Section 6 of the Railway Labor Act, as amended, to cover all employees of this Carrier in its Traffic Department and this matter is now in negotiation.

Numerous conferences have been held and proposals and counterproposals submitted relatives to requests of The Order of Railroad Telegraphers for a revision of their agreement including a new scope rule, and while the matter remains unsettled, negotiations are presently being conducted on the property. As the Carrier has shown that work in the traffic office is not presently covered by the agreement with The Order of Railroad Telegraphers, which fact was recognized by the employees' representatives prior to these installations and again by the serving of the notices under the Railway Labor Act, as amended, of their desire to change the rules to include the positions and work in question, there is no basis in support of the claim, and it should be denied. This is in accordance with many precedent awards issued by this Board to the effect that it is not the purpose of the Adjustment Board to make new rules but, instead, to interpret them and apply them to the facts of particular cases. See Third Division Awards 1299, 1687, 1813 and 2335.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier on November 17, 1947, placed in operation a mechanical message machine (teletype) in the office of the Assistant Freight Traffic Manager at Birmingham, Alabama, for the purpose of transmitting and receiving messages to and from off-line traffic offices in Georgia and Florida as well as to the Chicago "X" telegraph office for relay to and from general offices and other on-line points. The teletype machine and service was leased from the American T. & T. Co., and was located in Carrier's uptown office one to two miles from Carrier's "BF" telegraph office located in the Freight Station. An employee not under the Telegraphers' Agreement was assigned to handle its operation.

Prior to November 17, 1947, part of the messages of the type referred to in the preceding paragraph were transmitted and received through Western Union; some by telephone, others by mail, and the balance were telephoned to or delivered by messenger to the "BF" Birmingham telegraph office where a telegrapher on duty around-the-clock sent the message over Carrier's wires.

The Scope Rule relied upon by the Organization provides, in part, as follows:

"Rule 1. For positions held by telegraphers, telephone operators, mechanical message machine operators located in telegraph offices, mechanical message machine operators who transmit telegrams between points not within one terminal, * * * the following rates of pay, rules for overtime, and working conditions will apply."

The Organization also relies upon Rule 38 which appears in the submission and will not, therefore, be repeated here.

We are convinced that the term "mechanical message machine operator", a generic term appearing in the Scope Rule, encompassed the operator of a teletype machine. Teletype is a trade name identifying one of several kinds of teletypewriters and because of the great strides being made in the art of transmission, it was good draftsmanship to use a broad, general term in setting forth the coverage of the Agreement, rather than to name a specific machine currently in vogue. Webster's New Collegiate Dictionary defines "telegraph" as follows:

"Originally an apparatus for communication at a distance by signals, now any apparatus, system or process for communication at a distance by electric transmission."

"Telegram" is defined as "a telegraphic dispatch". Hence, the mechanical message machine operator, as used in this Agreement, can be said to describe a specialist within the general Telegraphers' classification, transmitting telegrams, messages, dispatches, etc.

This Board in past awards has looked to the character of the work rather than the method of performing it when interpreting Scope Rules. See Awards 4516 and 864 in particular. The parties, it would seem, have removed any need to review past awards considering tradition, custom and practice in ascertaining the Scope of the Agreement. Coverage is spelled out in clear, unambiguous language here.

Carrier seeks to escape from the clear implication of the phrase "mechanical message machine operators who transmit telegrams between points not within one terminal" appearing in the quoted Scope Rule by several contentions. First, it attempts to distinguish Traffic Department business from other work on the railroad, including the work of sending telegrams, which it considers work incidental to that handled by its clerical force. It seeks to buttress this position by pointing out that positions on the rate sheet contained in the Agreement do not include any position in the Traffic Department offices at Birmingham or anywhere else in the country. This is true. The rate sheet lists but three operator positions at Birmingham but the same, primarily included for the purpose of showing rates of pay, speaks as of 1937 and the change in handling complained of here occurred in 1947 when the need for mechanical message machine operators first came into being at this point. A study of the Schedule and particularly the Appendix Key and rate sheets bears out the Organization's assertion that it anticipated the general use of teletypes and similar electric transmission machines when it negotiated into the 1939 Agreement the classification "mechanical message machine operator".

In this same connection, Carrier relies upon Awards 652 and 653 of this Division. Those awards are clearly not in point. The cited cases involved the handling of local messages between telegraph offices and traffic offices while here we are concerned with "telegrams between points not within one terminal", i.e., intercity or interstate messages.

Carrier next asserts that the then General Chairman of the Organization acquiesced in Carrier's plan prior to the installation of the teletype. No proof is offered in support thereof and the Organization denies it, hence the bare statement must be disregarded. Further, acquiescence will not destroy rights under an unambiguous rule.

Neither is the Organization's present position prejudiced by the fact that in February, 1947, it served notice of desire to revise the rules. A reading of the proposed change shows a desire to enlarge the scope of the rule and at the same time clarify rights thereunder by a generous use of words. These desires do not throw a cloud upon the meaning of the terse but unambiguous language of the rule before us.

Carrier stresses the fact that the work in question is carried on off of railroad property in an office building in the business section of Birmingham

and the Scope Rule, on the other hand, refers to mechanical message machine operators located in telegraph offices. True, but the next following classification, which we have quoted above, is not so conditioned. The rule would appear to set up two separate classes of mechanical message machine operators, namely: (1) those located in telegraph offices, and (2) those who transmit telegrams between points not within one terminal. The classes are separated by a comma and the conjunctive "and" is not used. The place of work is not tied down in Class (2).

The Carrier further contends that because telegraphers have never been used in Traffic offices, that the contract was never intended to cover such locations. In Award 2693 we held that it is the nature of the work and not the place of its performance which determines to whom the work belongs. Here the justification for the introduction of telegraphers into the Traffic Department first occurred when the mechanical message machine was installed in that office in 1947. The employee followed the work which the Agreement gave to him. This Agreement does not specify any certain place of performance in respect to non-local messages. If the parties intended to restrict use of mechanical message machine operators under the Telegraphers' Agreement to on-line points not within one terminal, the scope rule would have been the place to express the intent.

It is reported by Carrier that a jurisdictional dispute is pending between the Clerks and the Telegraphers with respect to the operation of teletype (mechanical message) machines. What we said in Award 4951 is applicable here. A jurisdictional dispute exists when the Carrier has not contracted with either of two or more crafts and a dispute arises as to which is entitled to perform the work. Where the Carrier has contracted with one or both parties to a dispute, no jurisdictional question is involved. It is then a matter of contract interpretation for this Board. We have found that this Carrier has contracted with the Telegraphers for the particular work here described.

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 Agreement has been violated.

AWARD

Claims (a), (b), (c) and (d) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of July, 1951.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 5410

Docket No. TE-5293

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: Illinois Central Railroad Company.

Upon application of the representatives of the employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3 First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Organization requests interpretation of the Award because of questions raised by the Carrier in respect to its application.

It is the position of the Carrier that the new Telegraphers' contract effective June 1, 1951, materially altered conditions on which Award 5410, issued July 27, 1951, was based; hence liability imposed under the Award ceased upon the effective date of the new Agreement.

The Carrier refers to the following language appearing upon page 1 of the new Agreement:

"Governing Wages, Rules and Working Conditions of Employees
Filling Positions Listed Herein."

It argues that because the position in question was not listed in the Wage Appendix of the new Agreement, the parties intended in their latest negotiations to exclude it from the Telegraphers' Agreement. The Carrier relies on Award 5384 in support of its contention that such Wage Appendix is part of the Contract and is interpretative of the Scope Rule. Factually our cases differ. In the cited Award the Appendix is tied directly with the Scope Rule by express language. In the instant case this is not so. The general subject heading relates to positions listed in the Contract which are those positions appearing both in the Scope Rule and Appendix. While the Appendix may be helpful in the construction of an ambiguous Scope Rule it is not the controlling factor in the interpretation of the whole Agreement. We look primarily to the Scope Rule to determine contract coverage.

As mentioned in our initial Opinion, the teletype machine which was the source of controversy, was put in use in the Traffic Department in 1947. Presumably extended discussion of the questions determined by our Award was had both at the time of and subsequent to the machine's installation. Not succeeding in resolving the controversy upon the property, the parties submitted the question to this Board. While Docket TE-5293 was pending, a new Contract was negotiated. In view of this factual setting, we would not expect to find the controversial position listed in the Wage Appendix and its omission is unimportant. Unimportant, we say, because of our prior finding that the position is set forth free of ambiguity in the Scope Rule which

appears in identical language, in respect to its pertinent provisions, in both the 1939 and 1951 Agreements. Our interpretation of the Scope Rule of the earlier Agreement is therefore carried forward into the new unless there is a declared intent to the contrary. (See Award 5703.)

The Carrier then asserts that there is a declared intent to the contrary so as to render our interpretation of the 1939 Agreement inapplicable after the effective date of the new Agreement, June 1, 1951. It points out that in the Exceptions Section of the new Agreement, Rule 2, that a new phrase was injected, namely, **traffic department agents**. In its full form it reads, "Supervisory or traffic department agents" which replaced the old phrase "Supervisory agents". The argument seems strained. If the new language referred to traffic department offices, positions or employes the contention would carry compelling weight. Appearing in a phrase dealing with supervisory personnel, the term agents would seem intended to refer to one of like class, the agent, and not employes of his office. We cannot conclude that the Organization intended to deal away its then pending case by use of the quoted language. If such was intended it could have been done so easily by use of express language in the form above suggested.

The payments preferred by the Carrier, we must find, do not absolve it from obligations under its Agreements with the Order of Railroad Telegraphers and for the reasons herein set forth.

Referee J. Glenn Donaldson who sat with the Division, as a member, when Award No. 5410 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of November, 1952.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

INTERPRETATION NO. 2 TO AWARD NO. 5410
DOCKET NO. TE-5293

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: Illinois Central Railroad Company.

Upon application of the representatives of the employes involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3 First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

To justify interpretation of an award, we should find, appearing from the claim, opinion, findings or award, some ambiguity in language which renders uncertain the application of the award upon the property. Factual reexamination should be confined to the original submissions of the parties for otherwise, as we have pointed out in Interpretation No. 1 to Award 4720, we "would be going beyond the function of interpretation and in effect handle a new case on an improper record" and, we might add, without full opportunity being afforded to resolve the dispute upon the property in some instances.

Initially all that was before us in the way of facts concerned the direct transmittal of messages, by use of teletype machines, from the office of the Assistant Traffic Manager at Birmingham to points located outside of that terminal. We held, in essence, that under the effective Agreement and based upon the practice then existing, the work of telegraphers had been infringed upon and the claims asserted were sustained.

The Organization would now read into our ruling a meaning which was neither intended nor suggested by us. At page 4 of its Request for Interpretation, we read, in part, the following:

"* * * under the findings in Award 5410, the work of performing the duties of operating the mechanical message machine in the Assistant Freight Traffic Manager's office under any and all circumstances, is work covered by the Telegraphers' Agreement and shall be performed by employes under said Agreement." (Emphasis supplied).

The underlined phrase finds no support in either the original Award or in Interpretation No. 1. The expression is more than a matter of semantics; it is the basis for the argument now advanced by the Organization. Our initial ruling was based upon facts as we then found them. Subsequent to our ruling, it now appears, the method of handling messages was changed to an extent sufficient to render at least questionable the applicability of our initial award. New facts posing new questions carries us outside of the

proper scope of the interpretative procedures. Unless settled upon the property, the present dispute should be progressed as a new case in the usual manner.

Request for interpretation denied.

Referee J. Glenn Donaldson who sat with the Division, as a member, when Award No. 5410 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1954.