

Award No. 5627
Docket No. TE-5487

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad Company, that:

(a) The Carrier has violated and continues to violate the provisions of the Agreement between the parties when and because it has declined and continues to decline to assign to employees covered by the said Agreement the duties of operating all printing telegraph machines and other mechanical machines used for transmitting or receiving communications of record, and all auxiliary machines used to perforate tape or cards in a secondary operation which transmit or receive communications of record;

(b) the Carrier shall be required to forthwith assign all such duties to employees covered by the Telegraphers' Agreement; and

(c) for each and every eight hour trick that these printing telegraph, card-controlled tape punch, tape-controlled card punch machines have been or may be operated by employees not under the Agreement, the senior idle extra employees under the Telegraphers' Agreement shall be paid by the Carrier a day's pay at the telegrapher rate applicable to the particular location.

EMPLOYEES' STATEMENT OF FACTS: An Agreement bearing effective date of June 15, 1947, by and between the parties and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Prior to July 1945 all communication service of record, such as messages, reports, train orders, etc., were transmitted and/or received by employees under the Telegraphers' Agreement. The approximate time that printing telegraph machines, with the auxiliary card-controlled tape punch or tape-controlled card punch machines, began operations and such operations assigned to persons not under the Telegraphers' Agreement are:

Maybrook
Cedar Hill
Hartford
Springfield

July, 1945
June, 1947
December, 1947
December, 1947

While this is the method of operation as applied to the punch card system on Carrier's lines, the Teletype Printing Machine may be put to very many other uses with varying methods of operation. To settle various jurisdictional issues which had arisen out of the teletype's numerous applications, in 1935 the then presidents of the Order of Railway Telegraphers and the Brotherhood of Railway Clerks reached a comprehensive agreement as to the jurisdiction of their respective organizations over employees operating teletype machines. The agreement was as follows:

"1. Where teletype machines are installed to take the place of the transmission of reports and messages formerly transmitted by telegraphers, The Order of Railroad Telegraphers will have jurisdiction.

2. Where teletype machines are installed for the purpose of transmitting reports and messages previously transmitted by messenger or mail, the Brotherhood of Railway Clerks will have jurisdiction."

Attached as Exhibit D is a copy of the pertinent correspondence.

The agreement makes clear that the work on the New Haven has been properly assigned. The system used does not replace communication formerly handled by telegraph—it is in lieu of distribution by mail or messenger. The scope rule of the New Haven's agreements is in accord with the 1935 understanding. And the quotation further confirms the meaning of the revised scope rule of the 1947 and 1949 contracts. It is persuasive evidence that this claim should be denied.

4. The dispute is jurisdictional and not properly submitted to this Board.

Carrier's position is that the positions in issue are properly filled by employees under the Clerks' schedule. We submit the preceding sections of this brief support the assignment of work that has been made.

The fundamental issue is, however, one of jurisdiction involving the Brotherhood of Railway Clerks and the Order of Railroad Telegraphers, whether all clerks now employed in preparing records at Carrier's nine principal yards shall be displaced by employees of the Telegraphers' craft. For the dispute is clearly over existing positions now filled under the Clerk's contract. The wording of the Employees' claim makes this abundantly clear. It does not concern either abolished positions or a request that new positions be established.

In these circumstances the Clerks' organization is an essential party to the dispute, for a lawful order may not be made without giving it an opportunity to be heard. Not only has the Board repeatedly so decided, it is also well settled that there is no power under the Railway Labor Act to proceed in a jurisdictional dispute.

CONCLUSION.

Carrier respectfully requests that the Board dismiss this dispute for lack of jurisdiction.

If jurisdiction is assumed, we submit the claim should be denied as without merit upon a finding that the work involved in the claim has been properly assigned and that the agreement with the Employees does not call for any different arrangement.

All facts and arguments have been presented to Employees' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Order of Railroad Telegraphers claims that the Carrier has violated and continues to violate their Agreement because it

has declined and continues to decline to assign certain work to employees covered by the Agreement.

The record shows that the Carrier has entered into another collective bargaining with the Brotherhood of Railway and Steamship Clerks and has assigned the work in question to employees under that Agreement who are now performing it. The Brotherhood of Railway and Steamship Clerks has not been served with notice pursuant to Section 3(j) of the Railway Labor Act.

There is color in a claim that the Scope rules of both Agreements cover the work. It also appears, however, that the two Organizations, by an exchange of letters between them, have reached a mutual understanding upon the interpretation of their respective Scope rules with respect to the kind of work involved in the claim. But it does not appear that the Carrier, also a party to the collective bargaining Agreements, assents to this interpretation; nor can it be said with certainty that any specific application of this interpretation to the facts presented by this claim will comport with the Clerks' understanding of it.

In these circumstances, the Carrier's motion to dismiss the claim should be granted without prejudice upon the authority of, and for the reason stated, in Award 5482. See also Award 5599.

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 claim should be dismissed without prejudice for the reasons above found.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1952.

DISSENT TO AWARD NO. 5627, DOCKET NO. TE-5487.

We dissent.

A. R. Ferris
A. J. Cunningham
J. H. Sylvester
G. Orndorff
Roger Sarchet