

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Denver and Rio Grande Western Railway, that

(1) The Carrier is in violation of the agreement between the parties when on or about August 14, 1950, and continuing Monday through Friday each week thereafter, it requires or permits an employe not covered by said agreement to perform wire chief work at "DC" Telegraph Office, Denver, Colorado; and

(2) The senior idle telegrapher at "DC" Telegraph Office, Denver, be compensated an amount equivalent to a day's pay of eight hours each day that wire chief work has been performed by an employe not covered by the effective Agreement commencing August 14, 1950, and continuing thereafter until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement bearing effective date of June 1, 1946, including changes and agreed-to-interpretations as shown in the reprint of February 1, 1952; a copy of which has been furnished the Board and which is by this reference placed in evidence and made a part of this submission.

Prior to August 14, 1950, all of the wire chief work at "DC" Telegraph Office, Denver, Colorado, was performed by employes covered by the effective Agreement between the parties. During the daytime the wire chief work was performed by the Manager of the Telegraph Office who was in fact manager-wire chief, and during the night hours it was performed by the Night Chief and Late Night Chief.

These positions, which embraced the wire chief work, were negotiated into the Agreement under Rule 36, the Wage Schedule, which appear at page 32 under the heading of Relay Department are as follows:

"Location	Classification	Hourly Rate
Denver 'DC'	Manager (Monthly rate \$400.38)	
	Night Chief	\$1.875
	Late Night Chief	1.855
	Telegraphers	1.825
	Printer Operators	1.825"

OPINION OF BOARD: This docket and docket TE-6512 and the awards based thereon will be treated together. They were so considered in the presentations, and the Carrier representative covered both dockets in the same brief. They involve the same Carrier, the same office, and the same individuals. While it is true that the docket in TE-6512 involves the Maintainers' Agreement, the latter group is represented by the same Organization.

On behalf of Claimant it was stated on the docket (TE-6509) "And, as we note in our discussion of Docket TE-6512, the employes disputed the Carrier's assertion and requested a joint check of the record of 'wire chief' work in order to determine the facts. But this request was denied by the Carrier." This has reference to contention of Carrier that Maintainers have performed testing and regulating work since prior to 1944.

On April 17, 1951, Carrier wrote the Organization in part as follows:

"At the conclusion of the conference on June 11th it was agreed that you would meet during the coming week in the office of Mr. W. W. Pulham, Superintendent of Communications, with R. E. Knapp, Local Chairman for the Maintainers, Mr. C. B. Fulmer, Manager of the Denver Relay Office, and P. D. Lewis, the Maintainer who is alleged to have performed services beyond the scope of his duties. The intended purpose of this conference was to develop facts with respect to what actually occurred and to endeavor to negotiate an understanding in the absence of any specific rule to cover with respect to what line of demarcation and overlapping of work the two crafts will be in the future."

On June 18, 1951, the Organization declined to participate in a joint check with the Carrier.

It was suggested during the presentation that these two refusals should be allowed to cancel each other out (assuming that they went to the same point).

Where would that leave this referee? Only in a worst state of confusion than he is presently because of the inconclusiveness of the material in the present dockets, and this is said without any criticism of either side's representatives, except to point out the obvious that it is quite unfair to ask anyone to attempt to pass on a situation without a full disclosure of the facts which are pertinent to the rules alleged to have been violated.

If the "idle telegrapher," claimant in this case, has any claim here it must be found in the Scope Rules of his Agreement. In that regard the Organization says "Scope rules of this Organization purposely do not spell out, in so many words, the work which is embodied within the terms of the Agreement, but it is an accepted and well established fact that they do cover work. They are within the category of the Scope Rules 'general in character' where tradition, historical practice and custom define the work covered; hence they cover all of the work traditionally, historically and customarily performed generally by the classes of employes therein specified."

It is important to note here that "the employes therein specified" in this docket could only refer to "Manager" in the Denver "D. C." office. It will be noted too that as distinguished from the other locations in Rule 36 Denver was the only office that had a "Manager" and not a "Manager Wire Chief." This can only mean that there must have been some distinction contemplated by the parties when the agreement was entered into. In commenting on this, the Carrier says "There is not now and never has been a position of 'Wire Chief' in the Denver office. While the Manager, Night Chief and Late Night Chief do perform some of the duties performed by the 'Wire Chief' portion of titles in the other offices, this has been only an incidental part of their duties." This claim is for "wire chief work at 'DC' Telegraph Office, Denver, Colorado."

With its presentation to this referee, the Organization's representative submitted only four awards on this docket which only remotely touch on the problem at hand and in two of them the claims were denied. (Awards 1983 and 2138) and in one where the claim was sustained (Award 5872) the Board said in part:

"* * * Past practice may be considered in determining what the parties regarded as the true meaning of an ambiguous or uncertain Rule or provision thereof. It may also be considered in instances where it is contended that there has been an agreed to interpretation whereby the parties have become bound. * * *"

In Award No. 2138 supra we find the statement "So long as that work is merely incidental to the performance of his regular duties, there is no violation of the agreement." In the absence of the information sought by both sides, as noted above, it is fair to say that whatever "Wire Chief" work was done by the Manager in the Denver office it was "merely incidental to the performance of his regular duties."

If the joint check requested by both sides should show that the Manager was engaged principally, i. e., devoting most of his time to "wire chief" work, and most of the work that was turned over to Printer Maintainer Lewis was "wire chief" work, the undisclosed "idle telegrapher" might have a case.

In view of the fact that the Organization represents all employees involved in this docket it would seem that a special duty devolves upon it to settle this "family quarrel" and we recommend that the dispute be negotiated on the property.

Since the burden was on the claimant to establish his claim that the agreement was violated, and he has failed to sustain that burden the claim will be dismissed without prejudice, subject to further negotiation on the the property.

(Page references relate to original document.)

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 Carrier did not violate the Agreement.

AWARD

Claim dismissed without prejudice subject to further negotiation after joint check on past practice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1954.