

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

LeRoy A. Rader, Referee

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**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 and Ohio Railroad, that:

(1) The Carrier violated and continues to violate the provisions of the Agreement between the parties, when, on September 1, 1949, it did, by unilateral action, declare the third shift telegrapher-ticket clerk position at Murphysboro, Illinois, abolished; while the work of the position was not in fact abolished but remained to be performed;

(2) Commencing September 1, 1949, the Carrier violated and continues to violate the provisions of said Agreement by permitting or requiring employes not covered by the Agreement to perform communication service of record and the operation of the train order signal at a time when no telegraph service employe is on duty at Murphysboro, which work was formerly performed by employes covered by the Agreement around-the-clock seven days a week.

(3) The work formerly performed by the telegrapher-ticket clerks at Murphysboro, including the work on rest days, shall be restored to the Telegraphers' Agreement and performed only by employes entitled to such work under the Agreement; and

(4) The former incumbent of the third shift telegrapher-ticket clerk position at Murphysboro who was improperly removed from his assignment, as well as all other employes resultantly displaced from their assignments, shall be restored thereto and be compensated for any wage loss as well as expenses as provided in Rule 23 for each day beginning with the date their assignments were improperly declared abolished, or the date they were displaced, and continuing each day thereafter until they are restored to their respective assignments; and

(5) All other employes who were deprived of work as a result of this violative act shall be paid for all wages lost.

**EMPLOYES' STATEMENT OF FACTS:** The Agreement between the parties effective March 1, 1929, with subsequent amendments, a copy of which has been furnished the Board, is by this reference, placed in evidence and made a part of this submission. Its provisions apply to all of the Carrier's telegraphers, telephone operators (except switchboard operators), agents,

This fact is further borne out in the Carrier's "Rules for the Government of the Operating Department." Under the duties of a train dispatcher we find the following rule:

"1077. They should bear in mind that many matters that are clear to them may not be fully understood by operators, conductors, enginemen and others, and must give instructions in such a manner that they will not be misunderstood. Being perhaps more familiar with existing conditions than other employees, it is the dispatcher's duty to take the initiative in so far as it lies within his power; see that trains are moved safely, anticipating hazardous conditions, and avoid issuing instructions or unsafe combinations of train orders that might cause an accident, due to confusion or misunderstanding.

"They will make the various records required and observe special instructions, including 'Instructions to Train Dispatchers'."

Aside from the contractual obligation, of which there is none, the Carrier insists that the arrangements that it has in effect are practicable and reasonable. Since the beginning of the Railroad, there have been dispatchers on duty at Murphysboro 24 hours per day. This force has not been increased. Therefore, from a practicable standpoint, it seems most unreasonable for the Telegraphers to argue that someone else is performing the duties of the Telegraphers.

The effect of sustaining the instant claim would be to require the Carrier to employ additional employees which obviously are not needed.

In Award No. 5283 (decided March 20, 1951) this Board restated a principle that was laid down by this Board in Award No. 439 (decided May 13, 1937) when agreements contained an express six-day guarantee. This well established principle is, as the Board states it:

"Neither can the Board agree that, under the application of the agreement between the employees and the carrier, the duties and work of a classified position must entirely disappear before the regular assignment of a position may be discontinued or abolished, as to do so would soon require all employment on the railroads to be regular full time assignments, would do away with the necessity for or use of extra employees, and would be against the economic operation of the carriers and opposed to the best interests of the carriers, the employees, and the public."

Also, in Award No. 5803 (decided May 26, 1952) this Board, in denying a claim of the Telegraphers that a position was improperly abolished, stated:

"It is the duty of management to operate its railroad with efficiency and economy. In so doing it may abolish positions not needed and assign the remaining work thereof to others of the same craft or to employees of another craft who are entitled to perform it." (Emphasis supplied.)

For the reasons herein expressed, the Carrier urges that the instant claim should be denied.

**OPINION OF BOARD:** On behalf of Petitioner it is contended that Carrier violated the Agreement when it abolished the position of third shift telegrapher-ticket clerk at Murphysboro, in that the position has not been abolished in fact as work remains to be done and is being done by employees not subject to the Agreement. It is requested that the violation be corrected by requiring Carrier to restore the disputed work by returning the former incumbent of the position to his job and paid an amount equal to his loss, including expenses as provided in Rule 23; also that all other employees adversely affected be paid for all wages lost.

The parties are in substantial agreement as to the facts and it is contended that for several years prior to the adoption of the 40-hour week there were three positions under the Telegraphers' Agreement at Murphysboro filled seven days each week, the regular incumbents working six days, and the occupant of a relief assignment working the seventh, or rest day, in each position. That the record shows in the past that this operation has not always been a continuous one and at times there was only a first and third shift, but that there is no record of there being any time when there was no third shift position, until this dispute arose. And that shortly before the effective date of the 40-hour work week agreement Carrier issued a bulletin which provided in part that on September 1, 1949, the position of third trick telegraph operator would be abolished, and that the hours of the first and second tricks would be changed so that incumbents would be on duty from 7:00 A. M. to 3:00 P. M., and 5:00 P. M. to 1:00 A. M., respectively. Also as of that date that Carrier declared abolished the then existing regular relief position which provided rest day relief for the three positions at Murphysboro. On the day previous Carrier issued further instructions directing that the telegrapher on duty at midnight of that date turn over to the train dispatcher all of the remaining work of the third shift telegrapher position. That as a result thereof no telegrapher was on duty from 1:00 A. M. to 7:00 A. M. and from 3:00 P. M. to 5:00 P. M. each day of the week and during the entire period of rest days assigned to the first and second tricks and same was given to train dispatchers and to the supervisory agent, the latter not being under any agreement.

Cited in support of Petitioners' position is recent Award 6504 relative to the prompt handling of disputes to meet Carrier's contention thereon, together with Awards 5407, 5526 on the general propositions involved, the latter award citing Award 4018, relative to past practice in the handling of similar work.

On behalf of Respondent Carrier it is urged in brief: (1) That a delay of some three years in progressing a continuous claim to this Board should defeat the same. (2) Interpretation of the Scope Rule by the parties over a period of some 27 years likewise should defeat this claim. (3) The unchallenged practice of train dispatchers, over a period of 27 years, in performing all telegrapher's service at Murphysboro during times when no telegraphers were employed or on duty to assist dispatchers should likewise defeat this claim, and (4) Facts of record disclose that through the years train dispatchers have always performed all telegraphic work, including train orders and clearance cards, as showing that such work is not reserved exclusively for employees under the Telegraphers' Agreement.

In support of Carrier's position, there is cited on delay in progressing claim, the Railway Labor Act, as amended, Section 2, "General Purposes" and Award 4941, in which Referee Carter was sitting with the Board, which provides in part as follows:

"\* \* \* While it is true that a time limit in which an appeal must be taken to this Board from an adverse determination by a Carrier is not stated in the Act, or in the agreement before us, it is contemplated that disputes arising under it shall be handled expeditiously.  
\* \* \* For almost three years the Organization took no steps to bring the claim to this Board. The elapsed period exceeded that which could be said to be reasonable under all the circumstances shown.  
\* \* \* The purposes of the Act would be frustrated if disputes could be so held in abeyance and raised again at any future time when the chances of success might appear more favorable."

And on the merits it is contended that Section (a) of Article 1 does not attempt to describe work; it does not attempt to specify the inclusion of all telegraphic work within its scope, also citing Section (c) of the same Article and that train dispatchers are performing no work exclusively that of the

classification set forth in Article 1(a) of the Telegraphers' Agreement, which they have not performed continuously since the year 1929. Also citing Award 5256, Referee Boyd, involving the same parties and same issues as here involved.

In the opinion of the Board the following facts in relation to the rules are pertinent to a correct solution of this controversy. Section (c) of Article 1, Scope Rule, provides:

**"(c) No employes, 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." (Emphasis added.)**

This rule is certainly different from rules in other similar agreements which restrict the handling of train orders at points where telegraphers are employed, but not on duty, to employes covered by Telegraphers' Agreement. This is an extension in the use of the telephone and telegraphic facilities from other such rules and apparently such extension has been recognized by the parties for many years in connection with operations at Murphysboro. And by such historical background the parties in construing this rule have placed their own interpretation of the meaning of the same.

Referee Boyd in drafting the award in Award 5256 provided as follows:

#### "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."**

Apparently from the record submitted in Docket TE-5228 which resulted in Award 5256, the Board and Referee Boyd were in doubt as to the true facts as the presentation of facts were incomplete, therefore, the wording of the award in that case. On the general proposition here involved on past practice, see Award 6379 (Kelliher) in which is cited Awards 5331 (Robertson) and Awards 4889 and 4493 (Carter). See also Awards 5283 (Wyckoff) and 6032 (Whiting), abolishment of positions and relating to tradition, historical practice and custom in construing work covered by similar scope rules. Also Award 6188 and 6274 in the matter of sustaining of burden of proof in establishing claims.

We believe that a practice of failure to progress continuing claims for a period of three years is not to be condoned unless there is a definite showing of extenuating circumstances which prevented a more rapid disposition of the claim. The Railway Labor Act, as amended, places no time limit on the progressing of claims and hence the time element must be construed to be on a basis of what is reasonable under all the circumstances involved. This measuring yardstick is the same as that which prevails in statutory enactments or in general contract law where no time limit is designated therein and delays must be construed on conditions prevailing in each situation as to the reasonableness of the delay in bringing such matters to a termination. And in the instant matter, that of a continuing claim, greater care should be exercised in progressing the same as expeditiously as it is possible to do so. As has been pointed out in numerous awards of this Division, (for examples see Awards 6494 and 6495) diligence must be exercised in progressing claims of this nature. Apparently such diligence was not exercised in the instant matter. And we find no presentation of facts in the record of extenuating circumstances to explain the delay prevailing here.

Suffice to say there must have been some doubt in the minds of Petitioners as to the merits of these claims or the same would have been progressed more rapidly after the requests were denied by Carrier. With such a view we are inclined to be in agreement as the Scope Rule in the effective Agreement, in our opinion, does not give the exclusive right to Petitioners to the work in question. Also in keeping with the finding in Award 5256, we find no showing of sufficient strength as to any change in the volume and character of the work involved to merit a sustaining award. As to the increase or decrease in the volume of work, it is urged on behalf of Carrier that more work was available during the period of the recent World War which we may safely assume to be the fact as it is a matter of common knowledge that all transportation facilities were greatly extended by the war effort and it would follow that more work was available at that period than exists at the present time or at the time covered by this claim. On the proposition that Carrier has the right to abolish positions, under certain conditions, all concerned are in apparent agreement. And we find merit in the presentation made on behalf of Carrier in the matter of past practice, and no showing on behalf of Petitioners of sufficient force to refute the same and therefore conclude that the burden of proof necessary to establish these claims has not been met. In fact, the absence over a period of years to protest such a practice gives credence to the position taken by Carrier herein.

We are of the opinion that these claims must fail by reason of several factors: (1) Delay in progressing the same on the property. (2) Past practice, and (3) A failure to assume the burden of proof necessary to establish the same for a sustaining award.

**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 Employes involved in this dispute are respectively Carrier and Employes 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

Claims denied in accordance with Opinion.

#### AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

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