

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, 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 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 position at Tamms, 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 further violated and continues to violate the provisions of said Agreement by permitting or requiring employees not covered by the Agreement to perform communication service of record at a time when no telegraph service employee is on duty at Tamms, which work was formerly performed by employees covered by the Agreement around-the-clock seven days a week.

(3) The work formerly performed by the telegraphers at Tamms, shall be restored to the Telegraphers' Agreement and performed only by employees entitled to such work under the Agreement; and

(4) The former incumbent of the third shift telegrapher position at Tamms, who was improperly removed from his assignment, as well as all other employees 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 employees 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, assistant agents, ticket agents, assistant ticket agents, agent-telegraphers, agent-telephoners, towermen, levermen, block operators and staffmen, and the work performed by employees covering these positions.

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

Carrier requests opportunity for oral hearing.

(Exhibits not reproduced.)

OPINION OF BOARD: Request is here made for the re-establishment of the third trick Telegrapher's position at Tamms, Illinois, which the Organization claims was unilaterally abolished by the Carrier when a substantial amount of the work remained and was farmed out to the two remaining Telegraphers, and others not covered by the Agreement.

The claim is based primarily on a letter agreement entered into between the parties in June, 1939, the pertinent portion of which reads as follows:

"Your understanding is correct, namely, that as disposition of the controversy relating to the situation at Tamms and Tamms Yard, we will establish one telegraph position; the starting time of which will be around midnight but not later than midnight, and no train orders will be telephoned to the yard at Tamms when a telegrapher is not there on duty * * *."

The position was established and maintained up until September 1, 1949, when it was abolished by the Carrier. It will be noted that the period involved covered the years of the Second World War, and the abolishment followed the decrease of the need for the third trick Telegrapher.

Most of the work of this position has been taken care of by having the other two Telegraphers work overtime for which they were paid at the rates provided by the Agreement.

The Organization relies heavily upon our Award 5235, which does present a somewhat similar situation to that at hand but we do not consider ourselves bound thereby to the extent urged by the Organization. No one would assume that because the Carrier established the position in 1939 that it would have to be continued indefinitely. Award 5235 supra, concedes the right of the Carrier to abolish a position if less than a substantial portion of the work remains and such as remains is given to others covered by the Agreement.

Our problem, therefore, is to determine if a substantial portion of the work of the abolished position was left to be performed by others. Conceding that there were three hours of the third trick that were continued in the rearrangement of the hours of the first and second trick operations, we do not believe that hours alone are conclusive on the amount of work remaining, although that seems to be the measuring stick employed in Award 5235.

The Organization here falls far short of showing that a substantial amount of work remained in citing examples of violations of the Agreement outside of the hours worked by the first and second trick Operators, including the overtime worked by them.

Award 5235 also concedes that there is no provision of the Agreement (much less the Wages and Hours Law) that prohibits the Carrier from requiring an employe to work overtime. In its original submission the Organization made quite a point of the excessive overtime worked by the first and second trick men, but did not stress it in its remaining (4) submissions, and we do not believe the showing made indicates that the overtime worked was excessive.

It will be noted that the letter agreement relied upon by the Organization limits forbearance of the use of the telephone to train orders. We think that the list of "Memos." of train movements given by the Organization on pages 13, 14, 15, 16 and 17 of its ex parte submission may be train orders, but

the Carrier says there is no record of them and adds—"If there are such records, they could only have been made by persons other than those conversing, listening in on the telephone conversations and reducing excerpts of conversations to writing in the form shown." On the other hand, if these "Memos." listed by the Organization speak the truth the Carrier should have them on its train order sheet, because (again assuming they speak the truth) they are at least "OS" calls and should be so noted. Whatever the real situation is, it seems there should be no difficulty to establish it, since Carrier admits making "casual notations" of a number of the calls.

The Carrier relies strongly on the time limit rule which became effective between these parties on May 15, 1951. Without deciding whether it is retro-active to bar the claim, we do say that both sides were dilatory in processing this claim to the Board, and no recovery should be allowed for any claims arising during the period from November 9, 1949 until November 5, 1952. On the other hand, the Carrier gave the Organization reason to believe that it (Carrier) was going to initiate the proceeding to the Board in its letter of July 18, 1951.

Our conclusion on the whole claim is as follows:

(1) Denied; (2) Sustained; (3) Sustained; (4) Denied; (5) Denied.

As to items (2) and (3), the claim is remanded to the property for a joint check on alleged violations relating to train orders, and payment be made as for a call for each violation shown to those entitled thereto.

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 violated the Agreement to the extent indicated in the Opinion.

AWARD

Paragraphs (2) and (3) of the claim sustained; paragraphs (1), (4) and (5) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of June, 1954.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 6675

DOCKET NO. TE-6441

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: Gulf, Mobile and Ohio Railroad Company.

Upon application of both parties 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, as approved June 21, 1934, the following interpretation is made:

In the award the Board stated:

"As to items (2) and (3), the claim is remanded to the property for a joint check on alleged violations relating to train orders, and payment be made as for a call for each violation shown to those entitled thereto."

Pursuant to said remand, after it had laid dormant over six years, a joint check was held covering a period of a month in February of 1961, after which the carrier representative declined to proceed further because there was no record of any train orders having been made over the telephone during that time.

The organization concedes that none of the "memos" found were train orders in the sense used in the rules, and the organization's Vice President O. C. Jones in his letter to the Carrier on December 19, 1960, stated in part:

"* * * This check is to develop whether 'OSes' or notations relating to train movements had been made on train sheets, as compared with those listed by the Organization in its ex parte submission on pages 13, 14, 15, 16 and 17. With the information which may be developed by the joint check, we are to meet with you and endeavor to work out an agreeable settlement of the Award. **This understanding was reached without prejudice to your position that you are not bound to consider as violations, those notations which in your opinion are 'mere conversations'.**" (Emphasis ours.)

It is admitted that the records relied upon by the organization in its ex parte submission have been destroyed by the carrier, after having retained them for the three years required by the Interstate Commerce Com-

mission. Whether the carrier destroyed them at its peril cannot be considered in this proceeding.

The "call memos" set forth on page 9 of the organization's request for this interpretation are not train orders, nor even OSeS as defined by this carrier's operating rules and were for a calendar month in 1961. We pass no judgment on them, they being outside of the record.

Carrier's contention in this respect is sustained.

Referee Norris C. Bakke who sat with the Division, as a member, when Award 6675 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February 1962.