

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Kansas City Terminal Railway;

1. That Carrier violated the Agreement between the parties hereto, when on the 16th day of April, 1950, it removed from the scope of said Agreement the position of Manager-Wire Chief in "US" Office, Kansas City, Missouri.

2. That Carrier be required to restore the position of Manager-Wire Chief, "US" Office, Kansas City, Missouri to the Agreement by advertising and making assignment to the position as provided in the Agreement.

3. That Carrier be required to pay the senior Chief Operator, C. R. Pressly, or his successor, the difference in wages received as Chief Operator and the rate he would have received as Manager-Wire Chief, amounting to \$94.93 per month from April 16, 1950 until such time as the position of Manager-Wire Chief is properly assigned as provided in the Telegraphers' Agreement.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an Agreement between the Kansas City Terminal Railway, hereinafter referred to as Company or Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers, effective August 1, 1924, which covers wages, hours of service and conditions of employment for all employes of Carrier represented by Telegraphers. The Agreement has, of course, been supplemented by agreements for vacations, six day week (Mediation Case 2070) and the Forty-Hour Week. These supplemental agreements are not involved in the instant dispute.

Carrier provides terminal facilities to the twelve operating railroads entering Kansas City Terminal. The number of employes covered by the Telegraphers' Agreement are few. The principal telegraph office is located in the Union Station, Kansas City, Missouri, and is known locally by its telegraph call letters as "US" Office. Work performed in the office is solely that of handling of communications, including train orders.

Prior to January 1, 1936, the Office Manager was Mr. C. E. Marsh, who had the designated title of Superintendent of Telegraph. Mr. Marsh per-

The Board has often held that it is **not** their function to write rules or insert language that is not there. To hold for the Employees in the present case would have the effect of writing into the Rule a classification that was not or is not contemplated by either the old or the new Agreement.

All of the information herein has been discussed or is known to the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier operates terminal facilities for twelve railroads entering Kansas City, Missouri. It has maintained a telegraph office known as "US" which comprises a seniority district for 26 telegraphers on the roster. Prior to January 1, 1936, one C. E. Marsh, who was designated as Superintendent of Telegraph, was in charge of the office. Marsh performed no telegrapher's work and confined himself solely to administrative functions. His position was not covered by the Telegraphers' Agreement. On January 1, 1936, following the death of Marsh, his position was abolished, and the senior Chief Operator, C. A. Parr, was appointed as working manager who continued to perform telegrapher's work. The Carrier contended that Parr was not within the Telegraphers' Agreement. The Employees thereupon filed a claim for a day's pay for each day Parr was permitted to do telegrapher's work. The dispute was finally determined by this Board by Third Division Award 6068 which held that the position of Manager was covered by the Agreement. On April 15, 1950, Parr retired as Manager. The Carrier appointed E. L. Henzlik Superintendent of Communications. Henzlik performed no duties which were exclusively those of a telegrapher and, admittedly, performed only supervisory work as he was not a qualified telegrapher.

The Organization asserts that Award 6068 is determinative of the present case in its favor. The Carrier is just as positive that it does not. The dispute involved the positions that are involved in the present case. This Board decided that Parr's position as Manager was within the Telegraphers' Agreement and denied the claim. In that Award (6068) we said:

"Parr, after January 1, 1936, continued to devote a major portion of his time to the performance of the duties of a telegrapher operator. He did so up until the date of his retirement April 15, 1950. Admittedly, if Parr's position was covered by the scope of the Telegraphers' Agreement then the work he was performing was not a violation thereof. We think what was said in Award 435 of the position held by Mr. Lunsford is equally applicable to the position then held by Parr and which he continued to hold until he retired.

"It is true that Carrier insists that Parr's position was that of an official and, therefore, not covered by the scope of the Agreement. But this conclusion on its part does not necessarily make it so if the factual situation will not support it. We find the position which Parr filled, in view of the work he performed and our holding in Award 435, was within and covered by the Telegraphers' Agreement."

This award simply means that as the Manager continued to devote a major portion of his time to duties belonging exclusively to a telegrapher, his position would be deemed to be under the Telegraphers' Agreement.

In the present case, the Organization points out that the Carrier did not expressly abolish the Manager's position. It points out, also, that Carrier in appointing Henzlik stated: "Effective April 17, 1950 Mr. E. L. Henzlik is appointed Supervisor of Communications, vice Mr. G. A. Parr retired." It is true that the only written evidence that Parr's position was abolished is the change in the names of the position in the appointment. But the record is

clear that Henzlik did not and was not qualified to perform telegrapher's work. It is plain therefore that Henzlik's duties were different than Parr's in that the latter performed work belonging exclusively to a telegrapher the major portion of his time while the former performed no such work at all. The established facts control over conclusions drawn from the names given to positions. Award 4800.

The Carrier has the right to rearrange the work in "US" office to meet its service requirements within the limitations of its collective agreements. It is the prerogative of Management to determine the amount and character of the supervision required to expeditiously and efficiently handle its work. We think Carrier could properly designate Henzlik as Supervisor of Communications, although he is not within the Telegraphers' Agreement, so long as he performs no work that falls exclusively within the scope of that Agreement. Claimant is not entitled as a matter of right to perform the work of the Supervisor of Communications position when the duties of that position do not include work belonging exclusively to telegraphers. The fact that some of the work had been performed by Parr when he occupied the position of Manager is not a controlling factor in the absence of agreement provision making it so. It is not the title given to a position but the nature of the work that ordinarily determines if it is within or without the scope of an agreement. We fail to find any provision in the present Agreement which prohibits the Carrier from rearranging the work of the office as it did. After the rearrangement there was no telegrapher's work that was not being performed by telegraphers. A telegrapher's position appears to have been added to do the telegrapher's work performed by Parr. Under such circumstances, we are of the opinion that there was no violation of Agreement provisions by the Carrier in separating and assigning the work of the office as it did. See Award 6187, Third Division; Award 1829, Second Division.

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1955.