

Award No. 8656
Docket No. TE-6799

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE UNION PACIFIC RAILROAD COMPANY
(South Central District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Union Pacific Railroad, South-Central and Northwestern Districts, that:

(a) The carrier violated and continues to violate the agreement between the parties signatory thereto, when it requires or permits employes other than those covered by said agreement to operate printing and/or mechanical telegraph machines used in the transmission or reception of messages and report of record, and/or to perforate tape or cards as a function in the transmission or reception of messages and reports of record at the North Yard Office, Salt Lake City, Utah, and,

(b) That for such violations the carrier shall compensate the senior idle employe or employes covered by the Telegraphers' Agreement for the equivalent of a day's pay for each eight hour shift, both day and night, since the September 24, 1952 date on which claim was filed, at the Telegraphers' rate applicable to that particular location.

See Award 8258 for Statement of Facts and Positions of the Parties.

OPINION OF BOARD: This docket was before the Division with the present Referee sitting as a member thereof on a prior occasion. On February 28, 1958 Award No. 8258 was made deferring decision on the merits until notice was given to the Brotherhood of Railway Clerks. The Award provided:

Consideration of and decision on the merits is deferred pending notice by the Division to the parties, Carrier, Order of Railroad Telegraphers, and Brotherhood of Railway Clerks, as contemplated by Section 3, First (j) of the Railway Labor Act as interpreted by the courts.

Subsequent to the making of Award No. 8258, notice was duly given. Now that the procedural defect has been corrected the claim is before the Division for decision on the merits.

In the claim petitioner contends that carrier violated the agreement by "depriving telegraphers of operating printing and/or mechanical telegraph machines used in the transmission and reception of messages and reports of record and/or to perforate tape or cards as a function in the transmission or reception of messages and reports of records at North Yard Office, Salt Lake City." There is some confusion in the record with respect to just what petitioner is seeking. As the case has developed, it appears that the basic request is that telegraphers should "perform" the card to tape and tape to card machines. It is stated that petitioner does not claim the work of operating the Alphabetical Key Punch Machine.

Carrier denies that petitioner has been deprived of any work to which telegraphers are entitled under the applicable agreement. It is argued that no work exists to be performed; that automatic machines accomplish the objectives without the performance of work by any employees.

This controversy resulted when carrier installed a new system of handling car record information in the North Yard office in Salt Lake City. It is unnecessary to describe in detail here the new system. Suffice it to say that a series of automatic IBM machines were installed which machines perform their functions from punch cards. These punch cards are prepared by key punch machines, and from there on the process is automatic.

A careful review of the record does not support petitioner's claim that other employees of the carrier are performing work belonging exclusively under the Telegraphers' agreement. Rather, such work as telegraphers might otherwise perform or might have rights to under the agreement is now performed not by other employees but by the automatic operation of the machines in question.

The Division has not supported the proposition that when an automatic machine is installed to perform a certain function, the employee who previously performed that function is entitled to remain simply to watch the automatic machine operate.

We have concluded that this claim cannot be sustained. Such conclusion is in accordance with such prior Awards as Nos. 3051, 4063, 6416, and Second Division No. 1480.

It has been argued to the Referee that since Award No. 8258 was made by the Division, indicating the necessity of notice to the Clerks' Organization this claim should be automatically sustained, in that notice would not have been indicated in the event of a denial of the claim. We cannot concur in this view.

Since this question has been raised, it is appropriate that the present Referee comment on it, inasmuch as he has on occasion ruled that notice was unnecessary in the event of a denial Award. It is the present Referee's view that where a claim is deniable on its face, it is unnecessary to give notice to third parties. However, where the claim is such that there is a real possibility of a sustaining award, notice should be given. This does not preclude a denial award after notice has been given and where a full and mature review of the record dictates that such an award is proper. An award indicating the neces-

sity of notice does not have the effect of committing either the Referee or the Division to a sustaining Award on the merits. Rather, after the procedural defect is cured, full and uninhibited consideration must be given to the merits and the appropriate award made.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1959.