

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, that:

(1) The Carrier violated and continues to violate the terms of the prevailing agreement between the parties, when, commencing November 1, 1954 it unilaterally removed from the scope of the agreement and from the employes thereunder the work of handling the accounting, preparing reports and maintaining records in connection with waybills and switch bills covering inbound shipments at Hermosa, Illinois and delegated the performance of such work to employes not under the agreement located at another station.

(2) The Carrier shall now restore to the scope of the agreement and to employes thereunder the above described work at Hermosa, Illinois.

JOINT STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of September 1, 1949, is in evidence and is hereinafter referred to as the Telegraphers' Agreement.

Hermosa, Illinois is located on the Chicago Terminal Division and it serves several large industries in the immediate vicinity of the station. It is a one-man agency in charge of an agent who is assigned to work Monday through Friday of each week.

Prior to November 1, 1954 the Agent-Telegrapher at Hermosa handled and performed at this one-man station all of the station work in connection with inbound shipments at Hermosa. Effective November 1, 1954 the Carrier transferred certain items of accounting work in connection with inbound shipments to employes at Galewood, Illinois, another station, located approximately 2.7 miles from Hermosa.

The Organization insisted that all of this work properly belonged at Hermosa and that the agent-telegrapher at Hermosa is being deprived of work

With the exception of Forms 72, 3473 and 2975 the balance of the forms were not necessary for the Galewood station to prepare as they were settled under an accounting system whereby the auditor is given a copy of such bills, therefore, effective November 1, 1954 the majority of the above forms became non-existent. The items of work actually transferred were purely clerical duties which are not an exclusive function of telegraphers on this property and these few remaining duties have since November 1, 1954 been performed by employees within the scope of the Clerks' Agreement under the jurisdiction of the totally excepted agent at Galewood.

The employees have cited no rule of the effective agreement in support of their contention that the items of clerical work transferred is in violation of the prevailing agreement between the parties, nor does the Scope Rule of the prevailing agreement undertake to enumerate the functions embraced therein. The carrier has made no force reduction at Hermosa, nor has it decreased the rate of pay of the agency position. The handling of inbound carload shipments destined for the Hermosa station by the Galewood station is little different from the handling of outbound carload shipments originating at the Hermosa station which in recent years has been handled exclusively by the Galewood station, neither of which have affected or interfered with the agency position at Hermosa. It is the carrier's position, therefore, that under the circumstances shown by the record, it has properly exercised its managerial prerogative in rearranging the station work as it has, which was necessary in the interests of efficiency of its operation based upon demands of its patrons in the immediate vicinity of the Hermosa station. In so doing the carrier has in no way violated the terms of the prevailing agreement between the parties.

The claim is entirely without merit and should be denied.

All data contained herein has been made known to the employees.

OPINION OF BOARD: Hermosa, Illinois, is a small, one-man (non-telegraphic) agency located on Carrier's Chicago Terminal Division, 2.7 miles from Carrier's large station at Galewood. Before November 1, 1954, although bills of lading for outbound carload shipments originating at Hermosa had, without complaint by the Employees, been waybilled by Clerks at Galewood for many years, the waybills for inbound shipments to Hermosa, after having been sorted by Clerks at Galewood or Bensenville, had been sent to Hermosa station for expensing and accounting. Effective the above-mentioned date, Carrier in an effort to improve its service transferred the latter work to Galewood Clerks; and it is this action which is at issue here, as an alleged violation of the Telegraphers' general Scope Rule.

This Board has held that (1) a scope rule like the one here involved names and covers positions rather than specific work and operations; (2) such rule is therefore couched in general and in a sense vague, ambiguous terms; (3) the proper coverage of the rule is therefore to be determined from the facts of record (positive and specific, if possible) regarding custom, usage, and practice on the property and, even more appropriately, at the particular location; and (4) in interpreting such facts in respect to clerical work certain principles are helpful, such as (a) clerical work is not owned exclusively by Telegraphers or Clerks; (b) Telegraphers may perform clerical work that is incidental and in proximity to their telegraphic and/or agency work; (c) Telegraphers may be given clerical work up to the limit of their capabilities and their work-day time; and (d) if the telegraphic-agency work and/or the clerical work at a given location increases for whatever reason,

clerical work may flow out from one or more Telegrapher positions to one or more Clerks' positions (and, by the same token, may ebb back from Clerks to Telegraphers as clerical and/or telegraphic-agency work for any reason diminishes).

In the instant case there was a situation in which the Telegrapher had for many years been doing certain clerical work (mentioned above) that was incidental and proximate to his agency work, made his work-day a full-time one, and was suited to his capacities. Said clerical work by its nature was certainly not owned exclusively by him. But by virtue of the long-continued practice at Hermosa it belonged to him—unless the agency and/or clerical work at that location had for any reason increased to such an extent that the specific clerical work at issue here might properly flow out into a Clerk's position.

If the agency had experienced such an increase in work, the question of whether the increase should have flowed to a new Clerk's position at Hermosa or might properly have flowed to an existing Clerk's position at Galewood is not important. Galewood is close to Hermosa and in the same seniority district. Given an increase in work, Carrier might properly have transferred the work here in question to Galewood Clerks.

But the record is mute as to whether any such increase in business and work occurred at Hermosa. In other words, Carrier has failed to establish any reason for the transfer of the disputed work other than its understandably laudable desire to make its service faster and more pleasing to shippers and customers. The latter is an equity point and may not properly be considered by this Board.

Given the lack of proper legalistic reason for transferring the disputed work and given the fact of the customary performance of said work at Hermosa, the Board is compelled to rule that said transfer violated the Agreement's Scope Rule, interpreted by the principles above set forth.

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 Agreement was violated.

AWARD

Claims (1) and (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 16th day of April, 1959.