

Award No. 9753
Docket No. TE-6845

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY
(Northwestern District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad, Northwestern District, that

(a) The duties and responsibilities in connection with the transmission and reception of messages and/or reports of record, either or both, required to be performed by means of a mechanical message machine (teletype) in the Spokane City Ticket Office, Spokane, Washington, is work covered by the Telegraphers' Agreement and shall be performed by employees under said agreement.

(b) The Carrier in requiring or permitting employees not under the Telegraphers' Agreement to continuously perform such work in the Spokane City Ticket Office at Spokane since November 15, 1951, is in violation of said agreement.

(c) The senior available idle employees covered by the Telegraphers' Agreement, who could have been used to perform such work at Spokane since June 5, 1952, during the hours of the day and night such work was performed by employees not under said agreement, shall be compensated for this work of which they have been improperly deprived since that date; and,

(d) If the Carrier elects to continue the performance of such work at Spokane the necessary number of positions under proper classification required to meet the needs of the service shall be established and filled under the governing rules of the Telegraphers' Agreement.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of January 1, 1952, is in evidence. At page 73 of said Agreement is located positions and rates of pay for Printer Operators under the heading of a special agreement. The following position of Printer (teletype) Operator is shown in the special agreement to be under the Telegraphers' Agreement at Spokane City Ticket Office (Traffic Department):

"Location	Rate per Hour
Spokane—Traffic Dept.	80c"

Note: This rate of pay was applicable to the position as of April 1942 and does not reflect subsequent increases.

Without in any way waiving its position as to the notice required under the terms of the Railway Labor Act, the Carrier will show that there is no merit to the claim.

There is no agreement provision that requires the assignment of an employee represented by the Telegraphers' Organization to a position in the Spokane City office (Ticket Department) to handle the operation of an ordinary teletype machine.

The teletype machine in question is not a printer machine as referred to in letter agreement dated April 30, 1942, reproduced on Pages 73 and 74 of the effective agreement, and that agreement does not require the assignment of a qualified "printer operator" as defined in that agreement.

This case amounts to an attempt on the part of the Telegraphers Organization to force the assignment of an entirely unnecessary employee to a position in the Spokane Traffic office to handle a few hours' work that is presently handled (and properly) by the regular clerical force.

The employees who presently handle the teletype machine do so in accordance with the provisions of the clerks' agreement.

All data submitted by the Carrier have been presented to petitioners and made a part of the particular question in dispute.

(Exhibits not reproduced)

OPINION OF BOARD: We have for decision the question of whether the Carrier violated the agreements between the parties when it assigned the work of operating a teletype machine in the City Traffic office at Spokane to a clerical employee who is outside the scope of the Telegraphers' Agreement.

The Carrier asserts that the work does not belong exclusively to telegraphers, the agreement of April 30, 1942 is immaterial and the Employees have not proved their claim.

Some question was raised about proceeding in the absence of the Brotherhood of Railway and Steamship Clerks; the record shows that notice was given to that Organization on August 10th, 1960, which has failed to appear although it did inform the Secretary of this Division that it was not involved in this dispute. Since it appears that due notice has been given, and even acknowledged, the matter is now properly at issue and our determination will be binding on the parties.

Prior to April, 1942, the telegraphic communication service in connection with the operation of the Traffic Department or City Ticket office at Spokane, was handled by telegraphers at "AU" office, located in the Union Station seven blocks away.

On that day the Carrier installed a printing telegraph machine at the Traffic office. The position was bulletined and assigned to a telegrapher in due course. An agreement was made on April 30, 1942, one day after establishment of the position, listing the office and fixing the rate of pay. The agreement is still in force.

The position and printing machine at the Traffic office were discontinued July 15, 1942; Employees claim the telegraphic work was again performed by the "AU" office, and the messages, consists, etc. were handled between the two offices by telephone or messenger. Carrier asserts some communications were

handled by telegraph between outside points and the telegraph office in the Union Station, others were handled by telephone using Carrier's long distance lines between outside points and Spokane and Spokane City service between telephone exchange in Union Station and the City office.

This continued until November 15, 1951, when Carrier without notice installed a Teletype machine in the Traffic office, resumed the work formerly done and assigned the operation to a clerical employee.

The Carrier states that about thirty minutes a day are required to send the outgoing messages and that the "volume of communications handled amount to an average of not more than three (3) hours daily operation of the teletype."

Exhibits 14 and 15 were offered as samples of reports and typical messages transmitted and received and they clearly fall within the type of work traditionally reserved to the telegraphers. And where the scope rule lists positions, rather than work, it is necessary to look to past practice, tradition and custom to determine what work inures exclusively to employees covered by the agreement. Award 8331—Johnson: Award 9551—Bernstein.

Reference is also made to Award 5410—Donaldson, which embraces many of the facts which are before us in this case. There this Board held that the agreement had been violated and sustained the claim. We think we should do the same in this matter.

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 Agreements.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1960.

DISSENT TO AWARD NO. 9753, DOCKET NO. TE-6845

An Award is only as good as the reasoning back of it.

Here, the majority use as a basis for a sustaining Award a citation of Award 5410 by Referee Donaldson. Award 5410 is clearly distinguishable and has no application here.

There, the Scope Rule was clear and unambiguous, and read in pertinent part:

" * * * mechanical message machine operators who transmit telegrams between points not within one terminal, * * * ."

Here, the Scope Rule is of the general type Scope Rule, wherein work is not defined and reads as follows:

"Rule 1. Scope. This agreement will govern the wages and working conditions of agents, agent-telegraphers, agent-telephoners, telegraphers, telephoners, telegrapher-clerks, telephoner-clerks, telegrapher-car distributors, ticket clerks-telegraphers, telegrapher-switch-tenders, C. T. C. telegraphers, train and tower directors, towermen, levermen, block operators, staffmen, managers, wire chiefs, repeater chiefs, chief operators, printer mechanics, telephone operators (except switchboard operators), teletype operators, printer operators, agents non-telegraphers, and agents non-telephoners herein listed."

In considering claims based on the general type Scope Rule, as was before us in this case, the Board has rather uniformly held that resort must be made to tradition, custom and practice to determine the intent of the Parties. And, this the majority has failed to do here.

Forty-seven (47) prior Awards of this Division were cited to the Referee as having a direct bearing and as having precedent value in the instant case. Only two (Awards 8331 and 9551) are mentioned in the "Opinion of the Board" and, then, no attempt was made to show that they were "palpably wrong." Nor was any attempt made to show wherein the other forty-five (45) Awards, cited as having precedent value, were in error, or had no application here.

Instead, as a reason for this sustained Award, sole reliance is placed on Award 5410, an award clearly distinguishable by reason of the unambiguous type Scope Rule in that dispute which clearly defined the work, and an ambiguous type Scope Rule here which does not define any work.

Additionally, the majority apparently misunderstood the agreement dated April 30, 1942, which provided for the rates of pay and qualifications for the position of exclusive printer operator and it confused the work of a printer operator with the work involved in operating a teletype machine. But a printer operator is not a teletype operator and the telegraph printer machine is an entirely different machine than a teletype machine. As clearly shown in the record, a teletype machine requires no skill in operation, but this is not the case with regard to a telegraph printer machine. A printer machine perforates a tape and the employee operating it is required to be able to read the tape before a message is sent.

The majority, in its opinion, points out that from April to July 15, 1942, there was a printer machine in the Carrier's Traffic Office at Spokane which was operated by a Telegrapher. From July 15, 1942 to November 15, 1951, as before April 1942, communications and messages to and from the Traffic Office were handled by mail, long distance or local telephone, or by messenger to the Telegraph Office in the Union Station.

In the seventh paragraph of the Board's opinion, it states that on March 15, 1951, after the installation of the teletype machine in the Traffic Office, "work formerly done" was "resumed" and "assigned * * * to a clerical employee."

Since a printer telegraph machine and a teletype machine are entirely different, there is no basis for saying that the work resumed on November 15, 1951 was the same as that previously performed when there was a printer machine in the Traffic Office.

For the above reasons, we dissent.

/s/ D. S. Dugan

/s/ R. A. Carroll

/s/ P. C. Carter

/s/ W. H. Castle

/s/ J. F. Mullen

ANSWER TO DISSENT, AWARD 9753, DOCKET TE-6845

The dissenters correctly observe that an award is only as good as the reasoning back of it. So, also, is a dissent only as good as the reasoning on which it is based.

On that basis this dissent could not, by any means, be described as good. It expresses the dissenters' criticism on two main points: (1) That the scope rule here is ambiguous, requiring an examination of past practice to determine the intent; and (2) that the special agreement of April 30, 1942, has no application to the facts of this case.

Both of these arguments were presented in detail to the Referee who, after obviously careful consideration, rejected them. But since the dissenters still are not convinced that those arguments were unsound it becomes necessary to explore the reasoning back of them so all may plainly see the fallacies.

First. The scope rule is not ambiguous in its coverage of the work in question, the operation of a teletype used for transmission and reception of communications of record. In the usual manner of such rules it applies the terms of the telegraphers' agreement to various employee classifications, including specifically and without exception of any kind the classification of "teletype operators" and "printer operators".

Long ago this Board clearly established the principle that such enumeration of classifications in the scope rule, even if we consider them as referring to positions, made manifest the intent of the parties that those employees for whose benefit the agreement was made thereby acquired the right to perform the work of which such classifications are clearly descriptive. This principle holds such right to perform the work to be exclusive except as it may be limited by an exception agreed to by the parties or recognized by soundly reasoned awards of this Board to be inherently existent.

This principle was clearly enunciated by Award 1314, and has been adhered to, with a few exceptions which we consider to be obviously unsound, down to the present time as noted by recent Award 9416.

Co-existent with this principle is the complementary one that work so reserved to employees covered by one agreement may not be let to those covered by a different agreement or to non-employees.

Operation of these two principles is clearly observed in Award 6760, where we said:

"The rules (1) that a scope rule such as that here involved includes all the work on the Carrier's property of the kind and class which employs therein covered usually and customarily performed at the time of its execution and (2) that where the work is within the scope of the agreement the Carrier cannot let out the performance thereof to others unless it is specifically excepted under its terms or within some exception recognized by the Board as inherently existent, are well established. For just a few of our Awards wherein they have been recognized and applied see Awards Nos. 751, 1314, 3360, 3746, 4513, 4934, 4962, 5700, 5973 and 6284. Many more Awards could be listed but those cited suffice to establish the principle in question."

The scope rule involved in Award 5410 differed, in its application to work of the kind here in question, only in that an agreed exception or modification was included. That exception did not apply to the situation involved, therefore, the basic intent of the rule was seen to be the same as that in our present rule where no exception of any kind is either expressed or implied. And in a companion case, Award 5407, this Board found the scope rule to be without ambiguity in its coverage of communication work where only the generic classifications of "telegraphers" and "telephone operators" were set forth in the scope rule to denote coverage of such communication work. It thus becomes crystal clear that Award 5410 is a proper and pertinent precedent here.

The dissenters complain that no reference was made to forty-five of the forty-seven prior awards cited by them as "... having a direct bearing and as having precedent value in the instant case." Perhaps a brief comment on the first such award from which the Carrier Members quoted in their presentation to the Referee will clearly show why no comment was necessary in the Opinion of Board here.

That was Award 6071, involving these same parties. The dispute there concerned the handling of a train order by a conductor, using a telephone. The claim was denied on a finding by the Referee (Begley) that such work was not reserved "exclusively" to telegraphers because in his view "practice and custom" did not reveal such intent. Nothing in that award dealt in any way with work described by the classifications "teletype operators" and "printer operators" Nor did it deal in any way with a special memorandum agreement of any kind. Furthermore, this Division, in Award 8867, where the same question, same agreement and same parties were involved, clearly overruled Award 6071, stating, among other things, that "Naturally we think Award 6071 is wrong..."

A like analysis would similarly show that no comment was necessary on the remainder of the awards cited by the Carrier Members.

It must be kept in mind that even if the scope rule were considered to be ambiguous with respect to the work of "teletype" and "printer" operators custom and practice, as revealed by the record, clearly supports the conclusion reached. The work about which complaint was made had always been performed by telegraphers even when it was done by teletype in the traffic office in 1942. And, as we pointed out during panel discussion, certainly the addition of some extraneous work does not serve to nullify a telegrapher's right to perform that which he has always performed.

Second. The dissenters' charge that the majority apparently misunderstood the special agreement of April 30, 1942, can only be described as ridiculous. It is based on their contention that there is a distinctive difference between a "teletype" and a "printer machine".

All machines which perform the function of sending and receiving telegraphic communications in the form of a typed or "printed" page—as distinguished from the Morse code, key and sounder method—are universally known as "printers" or "printer machines". The word "teletype" or, more properly capitalized, "Teletype", is merely the trade name used by a particular manufacturer of such "printer machines". Most railroad men know this and compose their agreements accordingly.

But more to the point, perhaps, is the fact that the special memorandum of agreement referred to provides specifically that a telegrapher, in order to qualify for assignment to any of the positions listed—which includes the Spokane Traffic office—must:

"... correctly type, at a sustained speed, at least 60 six letter words a minute on communications machine (Multiplex, Teletype, tape and direct key board, Telemeter, and similar communications device),..." (Emphasis added).

There, for all to see, is the fact that the parties have not only made no distinction between a "teletype" and a "printer machine" but have specifically agreed that "printer operators", to hold a job in the Traffic office at Spokane must be able to operate all kinds of machines, including the "teletype".

We believe it must now be clear that the "reasoning" back of the dissent to Award 9753 is faulty in all of its parts. And, as we have noted before, the dissent is no better than the reasoning back of it.

J. W. WHITEHOUSE

Labor Member