

Award No. 9913

Docket No. TE-7370

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY
(Nashville, Chattanooga & St. Louis District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Nashville, Chattanooga and St. Louis Railway:

(a) The work in connection with the operation of telegraph printing machines (mechanical machines, including teletype) used in the transmission and reception of messages and/or reports, either or both, is covered by our agreement and must be performed exclusively by employes subject to the agreement on the districts where such machines are located.

(b) The Carrier violates the agreement when it requires or permits employes not subject thereto to perform such work in the various offices.

(c) If the Carrier elects to continue the performance of the work in question at the respective locations, the required number of positions under the proper classification to meet the needs of the service shall be established.

(d) The senior idle telegraph service employe on each district where said mechanical telegraph printing machines are in service, shall be compensated an amount equivalent to a day's pay at the proper rate during each 8-hour shift on a day to day basis, since the date such machines were placed in service and operated by outside employes; payment to continue until the violations are corrected. The names of such idle employes to be determined by a joint check of the carrier's records.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties bearing an effective date of September 1, 1949, copy of which is presumed to be on file with your Board.

Prior to about May 18, 1953, employes covered by our agreement performed all the work of transmission and reception of train consists, messages, and reports of record by use of the Morse telegraph, or by telephone in some instances.

On or about May 18, 1953, the carrier installed mechanical telegraph machines in many of its offices, including Memphis, Bruceton, Nashville, Chattanooga, Tennessee, and Atlanta, Georgia. It then assigned the operation of these machines to employes outside the agreement, without negotiation.

stood by all present at the conference that the scope of Telegraphers' agreement embraced mechanical devices that might be installed to replace the then present method of transmission and reception used by telegraphers (Telegraph and Telephone) in telegraph offices. (Affidavit of T. J. Hale, Carrier's Exhibit "C").

If Telegraphers were claiming all teletype work they should have said so at said conference when the question of the Clerks' agreement was brought up. But they said nothing.

"Agreements must receive a reasonable interpretation, according to the intention of the parties at the time of executing them * * *", * * * "A reasonable interpretation will be preferred to one which is unreasonable." (12 Am. Jur., Section 250, Page 791-792).

Carrier insists that an interpretation of Telegraphers' agreement according to their insistence would be unreasonable. It would take from the clerks' work which traditionally, historically and customarily belongs to them and hand over to telegraphers' work which never belonged to them and which was never performed by them in any way or by any method.

The interpretation of the agreements here insisted upon by carrier would take away nothing from either craft or group and would leave both with the same scope of work which they have traditionally, historically and customarily performed in the past. It would leave both groups where they have admitted they belonged as shown by exchange of letters in 1935, which letters are already copied in this submission, supra.

Carrier therefore submits that in view of the provisions of their agreement and the practice followed prior to the installation of the teletype machines, clerical employees are entitled to perform the work they are now performing in connection with the use of the teletype machines and that the manner in which the work is being performed does not constitute an infringement upon the rights of employees covered by the Telegraphers' Agreement.

The Carrier requests the Board not to assume jurisdiction in the dispute in view of the facts and circumstances involved and the reasons hereinabove set forth by Carrier. However should the Board assume jurisdiction it is the Carrier's position that the Employees' claim is unjustified and not supported by the evidence, practice or intent of the rules of the Telegraphers' Agreement and therefore requests that the Board so find and deny the claim in its entirety.

Furthermore, should the Board assume jurisdiction the Carrier insists that the Brotherhood of Railway and Steamship Clerks should be given notice of the hearing and given an opportunity to participate in the proceedings.

* * * * *

All matters referred to herein have been presented, in substance, by the Carrier to representatives of the employees, either in conference or correspondence.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: The employees, the Telegraphers, state that the Carrier violates its agreement with them when it requires or permits clerks to operate teletype machines for the purpose of transmitting and receiving telegraphic communications, consists, messages, reports, etc.

The employes state that at several points on the railroad (the terminals) the Carrier installed teletype machines. These machines were installed for the purpose of this claim, at Memphis Traffic Office, Bruceton Yard Office, Nashville Traffic Office, Union Station, Nashville Traffic Office, Uptown, Cravens Yard Office, Chattanooga, Traffic Office, Chattanooga, Traffic Office, Atlanta, Georgia. When the Carrier installed the teletype machines, certain well defined changes in the method of handling the usual reports, consists and other written material necessary to the operation of the railroad were made. Before the changes were made, some of the required material was handled between terminals by mail, and a considerable amount was transmitted by wire. The latter work was performed by Telegraphers. At most of the terminals, the material for transmission by wire was compiled at Yard Offices located some distance from the Telegraph Offices. Such material, as well as that received by wire, was handled between the Yard Office and the Telegraph Office by a messenger. At one or two of the places the offices were near enough that a messenger was not needed, the material simply being exchanged directly between clerks and telegraphers in the same office in the same building. Before the machines were installed the clerks prepared the necessary documents, the reports, consists, etc. — either on an ordinary typewriter or by hand writing them, making enough copies for everyone concerned. In cases where the documents were to be transmitted by wire or telephone to another point, one of the copies was delivered to the Telegrapher. At those places where the telegraph office was adjacent to the clerk's office, the material was simply handed to the Telegrapher. Where the offices were located some distance apart, as was the case at most of the terminals, the papers were carried to the telegraph office by messenger. When the material was delivered to the Telegrapher, he transmitted it to its destination by means of either the Morse telegraph or telephone. After the teletypes were installed, the clerks used them to prepare the documents. To that extent, the machines are merely being used in lieu of typewriters or handwriting to perform clerical work. The Telegraphers are neither complaining about nor claiming such work. It is clerical work covered by the clerks' agreement. However, the work performed by the clerks on the teletypes also causes the communication function of the machines to operate. It is this aspect of their use that caused the Telegraphers to complain. When the clerks used the teletypes to prepare reports, consists, messages, etc., the machines produced in addition to the typed copy, a perforated tape. The perforations are quite similar to the dots and dashes of the Morse telegraph, and their purpose is exactly the same — that is, to transmit intelligence instantaneously by wire. This tape is produced either directly by the machines being operated or, if connected by wire to a distant point, such machine causes the message to appear on another machine at a distant location. The distant machine may produce both tape and type copy or it may produce only the tape. In such a function where it produces tape, it is called a "reperforator". In the use of these teletype machines the Telegraphers have been entirely eliminated from the operation of producing telegraphic code. The only part of the work which the Telegraphers are permitted to perform is either to operate an electrical switch, taking no more than a second or two of time which connects the teletypes in the clerk's office to a distant location; or, in some instances, to insert the tape, which has been produced by clerks, into an automatic transmitting device which completes the operation. This work represents less than 1% of the actual transmission. Thus, more than 99% of the work — the production of code — is performed by clerks. The employes consider this to be an improper transfer of work covered by their agreement to the clerks who are not covered by the agreement.

The employes state that the question to be decided by this Board is: Does the right of Telegraphers to operate mechanical telegraph transmission or reception devices include preparation of the coded tape?

The Carrier states that on May 18, 1953, it leased two through teletype circuits from the American Telephone and Telegraph Company, one circuit connecting Carrier's telegraph offices at Memphis, Tennessee; Martin, Tennessee; Paducah, Kentucky; Bruceton, Tennessee and Nashville, Tennessee and other circuits connecting telegraph offices at Nashville, Tennessee; Chattanooga, Tennessee and Atlanta, Georgia. It also leased certain local teletype circuits from the Southern Bell Telephone and Telegraph Company.

This dispute, which concerns the handling of consists and other matters, involves Memphis, Bruceton, Nashville, Chattanooga and Atlanta.

Carrier states that no Telegraphers' positions have been abolished due to violation of the Scope Rule can be found, then it follows that the other rule cited could not have been violated by the Carrier. The Carrier states that that part of the Scope Rule relied upon by the Employees is:

"Operators of mechanical telegraph transmission or reception devices."

Carrier states that no Telegraphers' positions have been abolished due to the installation of the teletype machines on May 18, 1953 and that no work has been removed from under the Telegraphers' agreement. Therefore, the Telegraphers' agreement has not been violated. Telegraphers in the telegraph offices at the respective points where the traffic and yard offices involved are located still transmit and receive messages and consists. This they did prior to the installation of the teletype machines in the several traffic and yard offices and this they continued to do after the installation of the teletype machines.

From the evidence presented to this Board, it is apparent that prior to the installation of the teletype machines the clerk, if he were in the same office with the Telegrapher, handed to the Telegrapher a handwritten message to transmit or a type written message to transmit. Telegraphers, at one time, transmitted these messages by Morse telegraph and later by telephone, and with the installation of the teletype machines, they continue to transmit these messages, either by throwing a switch that transmits the message direct from the machine which is operated by the clerk or by the insertion of a tape, into an automatic transmitting machine, which is made by the teletype, which is operated by the clerk to type consists, messages, reports, etc. The installation and use of the teletype machines in the Traffic and Yard offices that are connected to the telegraph offices at the respective locations by local circuit is not in lieu of Morse telegraph or telephone service formerly performed and exclusively reserved to the Telegraphers, but is, as the record shows, in lieu of messenger service. This is true of the situation where a clerk in the Yard Office uses an isolated teletype machine, one not connected to any teletype circuit, in preparing consists, messages, reports, etc., because clerks in the Yard Office have always prepared consists, messages, reports, etc. Telegraphers in the telegraph office continue to transmit and receive consists, messages, reports, etc.

The Board finds from the evidence presented that the clerks are performing their traditional work and the Telegraphers have continued to perform their traditional work only in a different manner. The Employees do not contend that the clerks cannot type consists, messages, reports, etc. on these teletype machines. Their only contention is that clerks should not be allowed to make the tape which is automatically made when the consists, messages, reports, etc. are typed out by the clerks. The Employees also contend that the clerks do not have the right to send these taped messages to the Telegraphers

in the closed circuit. However, a careful review of the record does not support the Employees' claim that other employees of the Carrier are performing work belonging exclusively under the Telegraphers' agreement to Telegraphers. 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 teletype machines that are being used by clerks. This Division cannot support the proposition that when an automatic machine is installed to perform a certain function that part of that function, namely, the making of the tape, should be removed from the machine. The Employees' claim cannot be sustained. The telegraphers are performing the work of a telegrapher even though the performance of a Telegrapher's work takes less time now than sending the message by Morse code or by the use of the telephone. Telegraphers do not have the right under their agreement to prepare this type of coded tape.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1961.

DISSENT TO AWARD 9913, DOCKET TE-7370

The majority, consisting of the Referee and Carrier Members, correctly recognized the right of telegraphers to continue performance of their traditional work when the means of communication is changed to more modern equipment.

To that extent I am in agreement with them. But such right would exist — and does exist — by virtue of the comprehensive coverage by the scope rule of telegraphers' work in general. It follows that the majority has given little or no value to the parties' negotiation into the scope rule of the specialized classification "Operators of mechanical telegraph transmission or reception devices."

I cannot agree that the extensive negotiations which culminated in agreement by the parties that the craft of telegraphers would thereafter include "Operators of mechanical telegraph transmission or reception devices" had no

purpose other than to secure a right to turn on a switch and/or insert a tape into a transmitter.

The majority concedes that telegraphers have the right to perform these minimal duties. But at the same time they deny the right of telegraphers to perform the substance of communication work.

If these were facsimile machines that merely transmitted a picture of a written or typed message or report perhaps the placing of the material in the transmitter and turning on a switch would be all the work left to perform, and telegraphers might have no complaint if these operations were performed by them.

But no such conditions existed here. Each letter and figure of every message and report involved had to be transformed into code by a manual and individual manipulation of the keys of "Mechanical telegraph transmission . . . devices". Each letter and figure thus coded had to be translated into its original form by means of "mechanical telegraph . . . reception devices".

The telegraphers bargained with the Carrier for the right to operate such "Mechanical telegraph transmission or reception devices", not merely for the right to turn them on and off while someone else performed the actual coding and decoding work — the traditional duties of telegraphers.

The holding of the majority in this award nullifies all but a paltry fraction of the rights of these employees, secured by lawful collective bargaining, and is to the same extent erroneous.

For the reasons stated I dissent.

J. W. WHITEHOUSE
Labor Member.

CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT

TO AWARD NO. 9913, DOCKET NO. TE-7370

In the main, the dissent consists of nothing more than a restatement of the position taken by the Labor Member and the Telegraphers' Organization in this dispute, all of which was fully considered and found lacking in merit by the majority.

No purpose can be served in further arguing the issues which have been decided by the majority. The Award itself and the record upon which it was based ably stand as the best refutation of the position of the dissenter.

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ D. S. Dugan

/s/ J. F. Mullen