

Award No. 10192

Docket No. TE-8320

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that:

(a) The work in connection with the operation of machines used in perforating or punching coded tape for the transmission of telegraphic communications of record, is covered by our agreement and must be performed exclusively by employees subject to the agreement on the seniority districts where such machines are located.

(b) The Carrier violates the agreement when it requires or permits employees 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 employee on each seniority district where said 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 employees; payment to continue until the violations are corrected. The names of such idle employees to be determined by a joint check of the carrier's records.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties bearing an effective date of December 1, 1944 (reprinted March 1, 1951, including revisions). Copies of this agreement and supplements thereto are on file with your Board.

Prior to the Summer of 1951, employees covered by our agreement exclusively performed all of the communications work in connection with the perforating or punching coded tape for the transmission of telegraphic communications of record on this property.

principle that it is not the function of this Board to modify an existing rule or supply a new rule when none exists.

CONCLUSION

Carrier asserts it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and, therefore, requests that said claim, if not dismissed, be denied.

All data hereinsubmitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submissions which may have been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced).

OPINION OF BOARD: The Employees state that prior to the summer of 1951, employees covered by their agreement exclusively performed all of the communications work in connection with the perforating or punching coded tape used for the transmission of telegraphic communications of record on this property. During the summer of 1951, the Carrier installed new communications equipment known as 063 Card-to-Tape-I.B.M. Machines for the purpose of making tape. The Carrier did not assign the work of operating this I.B.M. 063 Card-to-Tape machine to telegraph service employees, but placed employees not covered by the Telegraphers' agreement on these machines for the purpose of making tape. Prior to the summer of 1951, Telegraphers had manually operated teletype perforators that made tape. After the installation of the 063 Card-to-Tape I.B.M. machine, whose sole purpose was to make tape, this machine was operated by a clerk.

The Employees state that the Carrier has violated Rule 41(a) of the Telegraphers' Agreement and the Interpretative Agreement of November 17, 1954 in connection with the application of Rule 41(a) of the Agreement.

The Carrier states that after extensive study, it undertook to modernize its car records and office procedures by installing in various of its yard offices I.B.M. machines of various types, such as, key punch machines, sorters, collators, reproducers, accounting machines, card-to-tape machines and tape-to-card machines. Prior to the installation of this equipment in the various yard offices, card records, train consists, bad order car reports and manifests were prepared by clerical Employees in manuscript form either in longhand or on a typewriter. Copies of these reports were either sent to the interested offices by mail or delivered to the local telegraph office for transmission by telegraphers to those addressed. The key to the I.B.M. system is the punch card in which holes are punched, either manually or automatically, with information to be used by the associated equipment in the compilation of the various records and reports. When cars in the terminal are classified and a train made up for departure, the cards are assembled in the order the cars will stand in the train. Where clerical Employees formerly prepared the consists in longhand or on a typewriter and delivered same to the local telegraph office for transmission, they now insert the cards in a card-to-tape machine which

automatically produces a perforated tape. The tape is then delivered to the local telegraph office where telegraphers transmit the consists by feeding the tape into a teletype transmitter which automatically prints a page consist and at the same time, the same list and a tape, is produced on a teletype receiver in the telegraph office at a distant terminal.

This dispute concerns the 063 Card-to-Tape I.B.M. Machine in the Yard Offices at the locations listed by the Employees.

The Carrier states that the claim of the Employees referred to the Board clearly indicates that it is both indefinite and vague, so much so that it is defective on at least two counts. It is for unnamed Claimants whose status is unknown to the Board. Also, the Employees seek, in the claim, to have a joint check made of Carrier's records in order to determine whom the Claimants might be. No request for a joint check was ever handled on the property. As to the Carrier's contention that the claim is indefinite and vague for the reason that it is for unnamed Claimants whose status is unknown to the Board, from a reading of the submissions, we find that the Employees have informed the Carrier on the property of the named Claimants at the following 11 locations: Gerber, West Oakland Yard, Klamath Falls Yard, Ogden Yard, Sparks Yard, Yuma Yard, Los Angeles Yard, Fresno Yard, Bakersfield Yard, San Jose Yard and Watsonville Jct. Yard. As to the contention of the Carrier that a joint check was not asked by the Employees on the property, this contention is well taken, as this Board has held that it cannot require the Carrier to search its records in order to make a claim or claims for Employees (Award 9343). However, at the yards above mentioned it is not necessary for the Carrier to search its records to ascertain who the Claimants are, as the Employees have named the Claimants at the above yards.

The contention of the Carrier that a third party notice must be given under Section 3, first (j) of the Railway Labor Act to the Clerk's Organization has been conformed with and a third party notice was given to the Clerk's Organization. The Clerk's Organization was afforded an opportunity to be heard which they waived.

The question involved in this claim is whether telegraphers have a right under the terms of their Agreement with the Carrier to operate the so-called 063 Card-to-Tape I.B.M. machines, which have been installed at certain named locations by the Carrier during the summer of 1951.

The 063 Card-to-Tape I.B.M. machine performs the sole function of perforating tape, which tape is then used to actuate a teletype transmitter, sending the required information to other places on the Carrier's system. A clerk places an I.B.M. punch card in the 063 Card-to-Tape I.B.M. machine, then places an ordinary teletype tape in its proper place, threading it through a slot where the punches can strike it, and then turns on an electric motor which operates this mechanism. The operation of this machine transfers the information from the I.B.M. cards to the teletype tape, which tape is then taken off the machine and delivered to a telegrapher. A telegrapher inserts the tape in the teletype transmitter which operates in the usual manner to send the electrical impulses over the telegraph wires to the proper destination. Prior to the operation of this I.B.M. 063 Card-to-Tape machine, Telegraphers had performed the identical work, by means of manually operated teletype perforators. The sole function of the I.B.M. 063 Card-to-Tape machine is to make tape. This machine is distinguished from the machine which resulted in denial Award 9913, as the teletype tape that was produced in the machine in (Award 9913) was a by-product of the clerical work of preparing the various car

reports and other documents. This 063 Card-to-Tape I.B.M. machine does nothing but produce tape.

Section 4 of the Interpretative Agreement dated November 17, 1944 reads as follows:

"The business or work now handled by employees covered by this agreement and any business or work reestablished which was formerly performed by such employees, shall not be diverted to the machines operated by other classes of employees." (Emphasis ours.)

The Carrier contends that the Interpretative Agreement refers to the application of Rule 41(a) and that this rule refers only to teletype and automatic printer machines and other automatic mechanical devices used to transmit or receive communication of record and that the I.B.M. 063 Machine does not transmit or receive communications of record. This is so. Rule 41(a) has been held by this Board to be clear and unambiguous in its language (Award 9116). It thus plainly requires the operation of any "automatic, mechanical device used to transmit or receive communications of record" by one or another of the classes specified in the Telegraphers' Scope Rule. Consequently, the Carrier is prohibited from assigning operation of such machines, even if they be considered "automatic" to Employees of any other craft. In Section 4 of the Interpretative Agreement entered into on November 17, 1944, the telegraphers are given more than the operation of automatic, mechanical devices used to transmit or receive communications of record. They are also given the business or work which was handled by the telegraphers as of November 17, 1944 or any business or work re-established which was formerly performed by such employees. Therefore, if the telegraphers had operated a perforator to make tape, the making of such a tape cannot now be diverted to the 063 Card-to-Tape I.B.M. machine operated by a clerk.

The Board finds that the Carrier has violated Section 4 of the Interpretative Agreement dated November 17, 1944 at the following locations where Claimants were named on the property:

	Date of Claim	Date 063 Card-to-Tape Machine Discontinued
Gerber	8- 2-51	7-1955
West Oakland Yard	9-10-51	
Klamath Falls Yard	12- 7-51	
Ogden Yard	7- 1-52	
Sparks Yard	5-16-52	
Yuma Yard	10-10-52	
Los Angeles Yard	10-22-52	
Fresno Yard	11- 1-52	
Bakersfield Yard	12-10-52	
San Jose Yard	1- 7-53	
Watsonville Jct. Yard	2-12-53	

The Carrier states that the I.B.M. 063 machines at Ogden Yard is the property of the Ogden Union Railway and Depot Company and are operated by clerks employed by the Depot Company; that Southern Pacific Telegraphers operate transmission and reception machines at Ogden. Under the Telegraphers' Agreement, Ogden Yard is mentioned as one of the locations coming under the Telegraphers Agreement. Therefore, Ogden Yard comes under the Tele-

raphers' Agreement and it is a violation of the Interpretative Agreement of November 17, 1944 at Ogden Yard to have clerks operating I.B.M. 063 machines at Ogden.

The monetary claim of the Employees is referred back to the parties to ascertain the amount of time that was required in the operation of the I.B.M. 063 machine on each day of each shift at each location listed above to make the teletype tape. After the amount of time is ascertained by the parties, the Carrier shall pay a day or a call to the named Claimants.

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

The Carrier violated the Agreement as set forth in the Opinion.

AWARD

Claim sustained in part as set forth in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November, 1961.

DISSENT TO AWARD 10192 — DOCKET TE-8320

The majority opinion in this award is erroneous for two basic reasons: (1) Its interpretation of the controlling agreement is contrary to the precise language used by the parties, and (2) it substantially rewrites the agreement through the improper conclusion that Section 4 of Interpretative Agreement dated November 17, 1944, supersedes Rule 41(a) and deals with other than teletype machines. Rule 41(a) "AUTOMATIC PRINTER MACHINES, ETC." reads:

"Section (a). Teletype and automatic printer machines, and other automatic mechanical devices used to transmit or receive communications of record, shall be operated by employees of one or another of the classes specified in Section (a) of Rule 1." (Emphasis ours)

This is the only rule in the basic agreement which was cited in the majority opinion. It is the sole limitation upon the right of the Carrier to assign the operation of the automatic machines to other employees instead of telegraphers. Rule 41(a) deals solely with machines used in the transmission or receipt of messages of record. It does not deal with the numerous automatic machines used by other employees which do not transmit or receive such messages.

With this distinction in mind the parties entered into an Interpretative Agreement dated November 17, 1944 reading in its entirety as follows:

“INTERPRETATIVE AGREEMENT
between
SOUTHERN PACIFIC COMPANY
(PACIFIC LINES)
and the employes represented by
THE ORDER OF
RAILROAD TELEGRAPHERS

In connection with the application of Rule 41(a) of the agreement between the parties which becomes effective December 1, 1944, it is understood and agreed that:

1. All teletype machines, hereinafter referred to as machines, which may be installed shall be manned and operated by employes represented by The Order of Railroad Telegraphers, except as provided in paragraphs 2 and 3 hereof.

2. This rule shall not apply to the operation of machines used solely for the purpose of communicating between offices in the same town or city where such machines are not located in telegraph offices or are not now manned and operated by employes covered by this agreement.

3. Machines now operated by other classes of employes in the following offices —

RENO District Freight and Passenger Agent,
SACRAMENTO Store Department,
RICHMOND Freight Office,
OAKLAND 5th & Kirkham Local Freight,
OAKLAND 13th & Franklin Genl. Pass. Agent,
OAKLAND 14th & Broadway Dist. Frt. Agent
*SAN FRANCISCO Chart Room 65 Market Street
*SAN FRANCISCO 4th & Berry,†
*SAN FRANCISCO Drumm Street,†
*SAN FRANCISCO 65 Geary Street,†
*BAYSHORE Yard,
SAN Jose Yard
SAN Jose District Freight & Passenger Agent,
WATSONVILLE JUNCTION Yard,
SALINAS District Freight & Passenger Agent,
LOS ANGELES General Shops,†
LOS ANGELES Coach Yards,†
LOS ANGELES Local Freight,†
LOS ANGELES Chart Room,
EL PASO General Store,†
TUCUMARI Yard Office,

* The various offices in the San Francisco terminal limits shall be considered as in one city.

† Indicates file is handled only intra-city or town.

may continue to be operated by such other classes of employes providing the same character of work is continued to be performed.

4. The business or work now handled by employes covered by this agreement and any business or work re-established which was formerly performed by such employes, shall not be diverted to the machines operated by other classes of employes.

5. This interpretative agreement is effective December 1, 1944.

Signed at San Francisco, California, this 17th day of November, 1944.

For the Company:

/s/ A. W. FLANAGAN
Superintendent of Telegraph

/s/ J. G. TORIAN
Manager of Personnel

For the Employes:

/s/ N. D. PRITCHETT
General Chairman

/s/ G. E. LEIGHTY
Vice President
The Order of Railroad Telegraphers"

This Interpretation commences with the following reference to the foregoing Rule 41(a):

"In connection with the application of Rule 41(a) of the agreement between the parties which becomes effective December 1, 1944, it is understood and agreed that: . . ."

It is clear that the parties intended the Interpretation to apply solely to automatic machines which are used to transmit and receive communications of record. No other machines are restricted by this language to operation by telegraphers.

Section 1 of the Interpretation deals solely with teletype machines of this specific character (viz., which transmit or receive) and reserves their operation to the craft of telegraphers. It declares:

"1. All teletype machines, hereinafter referred to as machines, which may be installed shall be manned and operated by employes represented by The Order of Railroad Telegraphers, except as provided in paragraphs 2 and 3 hereof."

Sections 2 and 3 provide that teletype machines at various locations and under specified circumstances may be operated by other classes of employes.

Section 4 contains the limitation that the business or work which is or formerly was performed by telegraphers shall not be diverted to **teletype machines** operated by other classes of employees. Inasmuch as the fallacy of the majority opinion rests upon a misconstruction of Section 4, it is quoted as follows:

"4. The business or work now handled by employees covered by this agreement and any business or work re-established which was formerly performed by such employees, shall not be diverted to the machines operated by other classes of employees."

The majority opinion correctly points out at the bottom of page 3:

"The Carrier contends that the Interpretative Agreement refers to the application of Rule 41(a) and that this rule refers only to teletype and automatic printer machines and other automatic mechanical devices used to transmit or receive communications of record and that the I.B.M. 063 Machine does not transmit or receive communications of record. This is so. Rule 41(a) has been held by this Board to be clear and unambiguous in its language (Award 9116). It thus plainly requires the operation of any 'automatic, mechanical device used to transmit or receive communications of record' by one or another of the classes specified in the Telegraphers' Scope Rule."

Curiously the majority diverges from the plain wording of the agreement at this point and declares:

"In Section 4 of the Interpretative Agreement entered into on November 17, 1944, the telegraphers are given more than the operation of automatic, mechanical devices used to transmit or receive communications of record. They are also given the business or work which was handled by the telegraphers as of November 17, 1944 or any business or work re-established which was formerly performed by such employees. Therefore, if the telegraphers had operated a perforator to make tape, the making of such a tape cannot now be diverted to the 063 Card-to-Tape I.B.M. machines operated by a clerk."

This conclusion cannot be reconciled with the statement of the majority opinion which immediately precedes it, as set forth above. On the one hand it is found that the controlling Rule 41(a) is unambiguous and reserves to telegraphers the operation of automatic mechanical devices which are used to **transmit or receive** communications of record. On the other hand the conclusion is reached that Section 4 of the Interpretative Agreement enlarges the restriction to 063 machines which do not transmit or receive, even though the same Section 4 precisely applies only to business or work diverted to the **teletype machines** operated by other classes of employees. ¹ It is apparent that such a conclusion does violence to the specific wording adopted by the parties. It cannot be regarded as a proper interpretation of the collective bargaining agreement.

At Ogden, Utah, one of the points at which claim is sustained in this case, the I.B.M. 063 machines are controlled and operated by clerks employed by the

¹ It is to be noted that Section 1 of the Interpretative Agreement clearly defines the word "machines", as used in Section 4, to be "teletype machines" only.

Ogden Union Railway and Depot Company over whom the Southern Pacific Railroad has no jurisdiction. The majority attempts to answer this by a recitation that:

"Under the Telegraphers' Agreement Ogden Yard is mentioned as one of the locations coming under the Telegraphers' Agreement. Therefore, Ogden Yard comes under the Telegraphers' Agreement and it is a violation of the Interpretative Agreement of November 17, 1944 at Ogden Yard to have clerks operating I.B.M. 063 machines at Ogden."
(Emphasis ours)

The Telegraphers' Agreement mentions "Ogden" and not "Ogden Yard", and the Ogden mentioned is the Ogden Telegraph Office in the station building operated by Southern Pacific, which is entirely separate and apart from Ogden Yard Office operated by Ogden Union Railway and Depot Company. The majority statement of facts is completely erroneous, and the Board has gone beyond its jurisdiction in substituting the words "Ogden Yard" for the word "Ogden" as it appears in the Agreement.

It should be noted that the Award of the majority sustains claims, inter alia, at San Jose Yard and Watsonville Jct. Yard, notwithstanding the fact that these two points are among those listed in Section 3 of the Interpretative Agreement as being points where it was recognized by the parties that other than Telegraphers were given the right to continue to operate teletype machines.

/s/ D. S. Dugan

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ T. F. Strunck

ANSWER TO DISSENT TO AWARD 10192, DOCKET TE-8320

The Carrier Members' dissent is nothing more than a restatement of the contentions made to the Referee and rejected by him. These contentions have no more validity now than they did when originally made.

If the parties had intended the Interpretative Agreement to be limited in the manner urged by the dissenters they could easily have done so by appropriate language.

Award 10192 does not rewrite the agreement as the dissenters charge. The Referee quite properly declined to rewrite the agreement to give it the effect urged by the Carrier Members.

The Award reflects the proper function of this Board, and the dissent has not impaired its propriety.

J. W. WHITEHOUSE
Labor Member