

Award No. 10237

Docket No. TE-8877

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

James P. Carey, Jr., Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
GULF, MOBILE AND OHIO RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile & Ohio Railroad, Southern Division, that:

1. Carrier violated the terms of the Agreement, between the parties when on the 27th and 28th days of August, 1955, and continuing thereafter on Saturday and Sunday of each week and on designated holidays, it required and permitted employes not covered by said Agreement to perform regular duties of first trick telegrapher at Meridian, Miss., thereby improperly relieving such first trick telegrapher on his assigned rest days and holidays, and

2. Carrier violated the terms of the Agreement between the parties when on the 27th and 28th days of August, 1955, and continuing thereafter on Saturday and Sunday of each week and on designated holidays, it required and permitted employes not covered by said Agreement to perform regular duties of second trick Telegrapher at Meridian, Miss., thereby improperly relieving such second trick telegrapher on his assigned rest days and holidays, and

3. That the senior idle telegrapher on the seniority district be compensated at the pro rata rate for each day other than a holiday; for each holiday at the time and one-half rate respectively for each such day the violation exists; or if no extra idle telegrapher then the regular assigned occupant of such positions to be compensated at the time and one-half rate for both rest days and the holidays improperly relieved.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 19, 1949, there were three seven-day positions at Meridian, Miss., classified as telegraphers, working three eight-hour shifts around-the-clock. Rest days were assigned but were worked by the regular occupants of the position because of a lack of qualified relief employes.

Commencing Sunday, February 20, 1949, the Carrier acting alone, changed the assignments of the telegraphers at Meridian, Miss., by bulletin reproduced below:

"At the Train Dispatcher's office at Nashville, Tennessee, there is a Trick Dispatcher used on each shift in round-the-clock service. There was a continuously operated telegraph office at Shops Yard Office which was located about a mile from the Train Dispatcher's office. It is the contention of the Organization that Dispatchers are doing Telegraphers' work at the Train Dispatcher's office. Claim is made for reparations for the senior idle Telegrapher for each day that Telegraphers' work is performed by Dispatchers."

"We think the work here in dispute has always been performed by Train Dispatchers on this Carrier as work incidental to their positions. The Telegraphers conceded their right to perform the work while Train Dispatchers were covered by the Telegraphers' Agreement. Apparently they have acquiesced in its performance by Train Dispatchers since 1911. Historically and traditionally the work has been that of the Train Dispatchers in the Nashville Train Dispatcher's office. By their own actions and by their own words over a period of thirty-five years or more, they have treated the disputed work as that of Train Dispatchers. Tradition has fixed the status of the parties to this dispute. We must conclude that the parties through the years intended to limit any exclusive claim to the disputed work on the part of the Telegraphers. We adopt the reasoning contained in Award 4922. A denial Award is required." (Emphasis ours.)

CONCLUSION

Dispatchers on the Gulf, Mobile and Ohio Railroad have always performed communication service. Whether or not they performed all communication service depended solely upon the need for assistance. Telegraphers have never had a monopoly on communication service. Both by the contract and the practice of the parties over a period of some thirty years, the dispatchers have performed communication service either on certain days of the week, during certain hours of the day or at all times. There is absolutely no need to employ telegraphers at Meridian, Mississippi, to assist dispatchers on Saturdays, Sundays and holidays. Such employment would only result in an unnecessary waste of manpower and revenues. This Board has consistently held that dispatchers may properly perform communication service and such communication service does not violate the Telegraphers' agreement. The claim before the Board is without merit and should be denied.

Carrier reserves the right to make an answer to any further submission of the Petitioners.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim is that the Carrier violated the scope rule of its June 1, 1953 Agreement with the Telegraphers by requiring dispatchers to perform regular duties of telegraphers at Meridian, Mississippi on Saturdays, Sundays and holidays commencing with August 27 and 28, 1955.

The position of the Employees is that telegraphers at Meridian hold the exclusive right to perform all work in connection with the transmission and receipt of telegraphic and telephonic communications which has by custom and practice become welded to the telegraphers' position as embraced in the scope rule of the Agreement. They insist that the Carrier lacked authority to unilaterally remove rest day work at Meridian from the telegraphers'

assignment and transfer it to train dispatchers, a different class covered by a separate Agreement.

Meridian is a dispatching point on the Carrier's Southern Division, located about half way between Mobile, Alabama and Okolona, Mississippi. Since before February, 1949 and through out the time covered by the various submissions of the parties in this case, the Carrier maintained a train dispatcher's office at Meridian on an around the clock basis, seven days a week. Prior to February 19, 1949 telegraphers were also employed at Meridian, twenty-four hours per day, seven days per week.

Effective February 19, 1949, the assignments of telegraphers at Meridian were changed from seven to six days per week. During the ensuing period of six and one-half years from February 19, 1949 to August 20, 1955, there were no telegraphers on duty at Meridian on Sundays and holidays, on all of which days the telegraph office was closed and train dispatchers on duty performed such telegrapher's work as was necessary. The Organization protested this arrangement, contending it was in violation of the Telegraphers' Agreement. Thereafter there was an exchange of correspondence between the parties in respect of the Employes' protest and the Carrier's denial of it, culminating in the Carrier's denial letter of January 11, 1950, with which the Organization expressed its dissatisfaction under date of June 22, 1951.

Commencing September 1, 1949 telegraphers and train dispatchers at Meridian were assigned to work five days per week with two consecutive days off. This compliance with the 40 Hour Week Agreement resulted in no change in the number of days on which service, duties or operations were required to be performed. Dispatchers continued to work around the clock seven days a week; telegraphers continued to work six days a week, and the telegraph office was closed on Sundays and holidays.

Effective August 27, 1955 the assignment of telegraphers at Meridian were again changed to the extent of dispensing with telegraphers on Saturdays, in addition to Sundays and holidays as heretofore mentioned. Consequently, on and after August 27, 1955 train dispatchers have handled train orders, telegraphic and telephonic communications and other necessary and related work at Meridian on Saturdays as they had similarly done on Sundays and holidays during the preceding six and one-half years.

The Carrier maintains that the discontinuance of telegrapher's assignments on Saturdays, as was previously the case with Sundays and holidays, was solely caused by a continued decrease in train miles operated which removed any need for telegrapher's services on such days; and that such minimal functions as might be required, and normally performed by telegraphers on other days of the week, were readily handled by dispatchers in line with established custom and practice on the property. It asserts that dispatchers at Meridian, dispatch trains between Mobile, Alabama and Okolona, Mississippi and their duties have materially decreased in the 10 year period between 1945 and 1955. The factors which have contributed to this reduction in volume of work have been vocal train dispatching, simplification of reports and a substantial reduction in train miles operated over the territory under the jurisdiction of the Meridian dispatchers. Train miles operated between Mobile and Okolona in the period from 1945 to 1956 decreased approximately 46%. Train miles operated on Saturdays and Sundays in the summer months of 1955 including Labor Day, for example, were materially below the lowered weekly average.

In reply to the Carrier's showing of materially reduced railroad business over the 10 year period following 1945, the Employees cite figures taken from Moody's Transportation Manual for 1955. These indicate that the Carrier's revenue Freight Tonnage of 14,550,873 in 1945 increased 20,988,949 in 1954 whereas its Revenue Freight Carloadings in 1945 of 423,782 were 568,242 in 1954. The same source reveals that Carrier's gross revenue for the fiscal year ended July 1956 was \$83,597,053 as compared with \$81,926,396 for the fiscal year ended July 1954. These Moody figures do not tend to refute or explain the substantial reduction in train miles operated on the Southern Division as reported by the Carrier. The record indicates that the increase in Revenue Freight Tonnage was to a material extent due to consolidated figures after the merger of G. M. & O. and Alton in 1947. The increase in gross revenues from 1954 to 1956 should also be considered in the light of the Carrier's showing that net income for the same period revealed a decrease of 8.46% for the entire system. We think it is apparent that the train miles operated in the territory in question were cut in half between 1945 and 1955.

The record in this case falls short of sustaining the Employees' contention that the communications work at Meridian, as well as at other points on the Southern Division of the Carrier was, before or subsequent to 1955, in the exclusive domain of telegraphers.

The scope rule of the Agreement of June 1, 1953 with the Telegraphers' Organization does not purport to describe the nature and extent of the duties to be performed by the Employees of the railroad represented by the Organization. Reference must be had to established custom and practice on this property to ascertain the areas of duties and service delegated to them, and whether they are so delegated and performed by them under any and all circumstances to the exclusion of any other class of Employees on the property. In this connection it will be noted that Rule 15 of the applicable Agreement provides:

"No employees other than covered by this agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located except in an emergency, in which case the telegrapher will be paid for the call."

This Rule is, of course, concerned with the work of handling train orders. What of other work usually and customarily performed by telegraphers under the provisions of the effective Agreement at points on this property where they are employed? The position of the Employees is that communication services of any character or duration governing the movement of trains or the transmission or reception of messages, orders or reports of record, is work exclusively belonging to them under the Agreement.

The record reveals that of seven dispatching points on the Carrier's Southern Division, including Meridian, no telegraphers were employed at four of them at any time material to this dispute. At those four points dispatchers performed all required communication service. At two other dispatching points, telegraphers have been employed on only some days of the week, or during some hours of a day, and when not so employed, dispatchers performed all communication service. At one point only, were telegraphers employed seven days per week. Against this background it would be inaccurate to imply an intention of the parties to the June 1, 1953 Agreement, that telegraphers were granted exclusive jurisdiction to handle communication duties.

It is conceded that prior to February 19, 1949 telegraphers were employed at Meridian seven days per week, 24 hours per day. Between February 19, 1949 and August 27, 1955 telegraphers were employed at such point on six days per week and on Sundays and holidays dispatchers, whose presence was required by the needs of the service, handled such communication work as was required. Likewise, on and after August 27, 1955 telegraphers have been employed five days per week and dispatchers have carried on the business needs of the station on Saturdays, as well as Sundays and holidays. If the reasonable business needs of the Carrier did not require the services of telegraphers at Meridian on more than five days per week, instead of seven or six as formerly was the case, and if termination of telegraphers' services at that point on Saturdays, Sundays and holidays was not, as in Award 6689, motivated by the purpose of circumventing the telegraphers' contract rights, we do not find support for the argument that telegraphers held exclusive right to handle communication work at Meridian under any conditions.

The Organization maintains that Award No. 6689 is decisive of the issue raised in this docket. The dispute which led to Award No. 6689 arose out of arrangements adopted by the Carrier in applying the 40-Hour Week Agreement. The Carrier took the position in that case that neither a regular relief assignment nor an extra Employee, as provided in the 40-Hour Week Agreement, was necessary to do the work at Murphysboro on telegraphers' rest days because telegraphers did not have exclusive right to perform the work, and that it was practical to have part of the rest day work done by train dispatchers and part by the agent. The majority recognized that the work was not telegraphers' exclusively, but was careful to point out the absence of any evidence to show that the re-arranged assignments were due to decreased traffic. The Carrier's action was held to have been motivated by an attempt to comply with the 40-Hour Week Agreement by transferring to dispatchers and agents what the majority described as "plenty of work necessary to be done on the rest days of the assigned telegraphers." The essence of the holding of the majority opinion in that Award was that the Carrier violated the 40-Hour Week Agreement by removing from the telegraphers at Murphysboro on Saturdays, Sundays and holidays, the equivalent volume of work which they performed on other days of the week.

In the instant case we are confronted with a different factual situation. The change in telegraphers' assignments on Saturdays effective August 27, 1955 is alleged by the Carrier and shown by the evidence to have been the result of a substantial reduction in business and a corresponding lack of need for the services of telegraphers on that day. The same observation is appropriate to the change made in February 1949. It is noted that the Employees' claim in respect of that earlier action was subsequently withdrawn by them. However, in neither instance is it shown that the Carrier's action was influenced by the 40-Hour Week Agreement. We find that Award No. 6689 was based on principles not involved in the instant claim, and that it does not provide a persuasive precedent in this case.

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 the Adjustment Board has jurisdiction over the dispute involved herein; and

We are accordingly required to find that the Organization has failed to sustain the charge that there was an Agreement violation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December, 1961.