

Award No. 10531
Docket No. TE-8683

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Louisville and Nashville Railroad that:

(1) Commencing October 1, 1952, the Carrier has continuously violated the agreement between the parties by requiring and/or permitting employes other than those embraced within the scope of the Telegraphers' Agreement to operate teletype machines (mechanical telegraph machines) used for transmitting and receiving messages, reports and similar communications at

DeCoursey No. 12 (Cincinnati Terminals)
South Louisville and Strawberry Yards (Louisville Ky.)
Radnor Yard and Southbound Hump (Nashville, Tenn.)
Boyles Yard (Birmingham, Ala.)
Howell Yard (Evansville, Ind.)
East St. Louis, Ill. Yard

(2) The Carrier violated the agreement between the parties when it failed and refused to assign to employes covered by the Telegraphers' Agreement the duties of operating said machines in connection with the work of transmitting and receiving messages, reports and similar communications.

(3) The Carrier shall forthwith assign the operation of these machines to employes embraced within the scope of the Telegraphers' Agreement.

(4) For each and every eight hour shift that said machines have been operated or are operated by employes not covered by the Telegraphers' Agreement, the Carrier shall pay a day's pay to the senior idle employe (or employes) covered by the Agreement, on the respective seniority districts where located, at the rate prescribed by the Agreement.

EMPLOYES' STATEMENT OF FACTS: Rule 1 of the currently effective agreement between the parties dated April 1, 1945 provides:

Ala., to assist telegraphers handling communications between those terminals by Morse telegraphy, for several months before the first agreement was negotiated with the telegraphers' organization in 1919. The only reasonable interpretation to be placed on the inclusion of "operators of mechanical telegraph machines" in the scope rule of that first agreement is that it was to reserve to telegraphers the transmission of communications between terminals, work which had customarily and traditionally been performed by them, regardless of whether handled by Morse, printer machines or other methods. But it would be most unreasonable to say that it was the intention of those who negotiated the agreement in 1919 by including in the scope rule "operators of mechanical telegraph machines" to some thirty-three years later turn over to telegraphers the clerical work traditionally and historically performed by clerks when improved machines, not then in existence, were installed to facilitate the handling of such clerical work in yard offices.

In 12 Am. Jur., Section 247, it is said at pages 784-786:

"247. **Surrounding Circumstances.**—In the interpretation of an agreement, the surrounding circumstances at the time it was made should be considered for the purpose of ascertaining its meaning, but not for the purpose of adding a new and distinct undertaking. In interpreting an agreement, a court should, to the best of its ability, place itself in the situation occupied by the parties when the agreement was made and avail itself of the same light which the parties possessed when the agreement was made so as to judge of the meaning of the words and of the correct application of the language to the things described."

and at pages 791-792, the following is said:

"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."

As carrier has shown, the modern day use of improved teletype machines has combined and eliminated certain parts of the work formerly performed separately by clerks and telegraphers. But the Carrier has so assigned the work remaining that the clerks still perform that portion of it which they performed in a different manner in the past, and likewise the telegraphers still perform that portion of the work which they have customarily and traditionally performed.

The division of the work between the clerks and telegraphers reserves to each craft the type or class of work historically and traditionally performed by each, and is therefore not in violation of either agreement. The claim of the telegraphers is therefore without merit and must be declined.

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

(Exhibits not reproduced.)

OPINION OF BOARD: It is the position of the Employes that the Carrier violated the Agreement between the parties by requiring or permitting employes other than those embraced within the Scope of the Telegraphers

Agreement to operate teletype machines (mechanical telegrapher machines) used for transmitting and receiving messages, reports and similar communications at various places on the Carrier's property.

It is the Carrier position that the classification "operators of mechanical telegraph machines" was intended to reserve to telegraphers that work which they had theretofore customarily performed and that it was not intended to be expanded to permit telegraphers to take over and claim as theirs, work customarily performed by clerks, and that the use of the teletype machine by clerks in the preparation of consists; train sheets, etc; is in lieu of work customarily performed by clerks previously by long hand or on a typewriter.

The Carrier also raises a number of procedural arguments. It contends that the dispute is jurisdictional. The question involved here is one of contract interpretation. True there is a dispute between the Clerks Organization and the Telegraphers Organization. The jobs sought have been held by the Clerks for many many years, they are at present held by the Clerks.

Does the Scope Rule classification "operators of mechanical telegraph machines" have the meaning ascribed to it by the Employees, that is the question. Such questions are not jurisdictional disputes.

In Award # 4471:

" . . . That is, if the work is claimed by an organization for its members it must have an agreement with reference thereto before this Board has jurisdiction to act thereon as this Board is solely an interpreting agency under the law creating it. If no organization, under its agreement, has the right thereto then it presents a question within the jurisdiction of the National Mediation Board. On the other hand, if the carrier has contracted the work to two or more organizations that fact does not divest this Board of jurisdiction to determine if the agreement before it gives to the members of that group the right to perform it. If this results in the same or separate divisions of the Board awarding the same work to separate organizations that does not result in loss of jurisdiction, but rather requires the carrier to renegotiate its agreements to remove the trouble."

Clearly the question is not a jurisdictional one, but an interpretation of the Agreement.

The record shows that notice was given to the Brotherhood of Railway Clerks, that Organization responded as shown by its letter of May 23, 1961, disclaiming involvement in this dispute. At the hearing held on June 6, 1961, pursuant to the third party notice, no one appeared.

In Second Division Award 3746, the Board said:

"The carrier urges that the Board may not properly proceed in this case unless all parties likely to be affected by an award are given notice as required by Section 3, First (j) of the Railway Labor Act. The record shows that the notice was issued and the question raised by the carrier is moot."

The Carrier objects to a decision on the merits, claiming that the Employees are guilty of unreasonable delay. The Awards are in conflict on this proposition. The claim was denied under date of December 20, 1952, but it

was not until better than three years later December 29, 1955 that the petitioner appealed to this Division. Three years is a long period, there is no explanation for the delay, however we do not pass upon this question believing it better to decide the case on its merits.

This case does not involve new jobs, they are presently held by the members of the Clerks Organization, they have never been held by the Telegraphers. The work was formerly performed by long hand or typewriters but now it is done by the teletype machine. The work performed by the clerks did not come under the Telegraphers Agreement.

The record before us shows that at the terminals involved, telegraphers have traditionally and customarily transmitted consists, etc. from terminal to terminal, so that in this respect there has been no violation of the Agreement because they have continued to do so under the teletype system installed October 1, 1952.

A very similar case involving the Telegraphers Agreement was recently decided by this Division, we quote from Award # 9913:

"... 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."

* * * * *

"Carrier states that this is essentially a scope rule case and that if no 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 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 messages 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 there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of April 1962.

DISSENT TO AWARD 10531, DOCKET TE-8683

I believe this award is seriously in error. The majority quite obviously is mistaken about the scope of the claim. The petitioning employees did not seek to take away from the clerks either their work or their jobs. They sought only to require the Carrier to continue observance of its obligation to assign operation of mechanical telegraph machines to employees coming within the scope of the telegraphers' agreement, just as it had done from the beginning of contractual relations between the parties.

The majority, in its "Opinion of Board", does not discuss the fundamental question in dispute. Reduced to its simplest terms that question was whether the Carrier could attain its objective of combining clerical and communication work into a single machine and have that machine operated by clerks without negotiating an exception into the scope rule of the telegraphers' agreement. But the majority chose to ignore both this basic question and the fact that the Carrier sought unsuccessfully for years to induce the telegraphers to agree to a modification of their rights under the scope rule. Instead, it decided the dispute as if such an exception existed.

In other words, the Carrier sought and has obtained from this Board a decision which has the effect of creating a sweeping exception to, or amendment of, the scope rule of the telegraphers' agreement, a result it was unable to secure by the proper means of negotiation.

This Board has no power thus to rewrite agreements. Many of our awards so hold. For example, in Award 5079 we said:

"This Board has consistently held by a long line of awards that the function of this Board is limited to the interpretation and application of agreements as agreed to between the parties. Award 1589. We are without authority to add to, take from, or write rules for the parties. Awards 871, 1230, 2612, 3407, 4763."

And in Award 8160 we unequivocally held that:

"... This Board is not authorized to revise agreements by holding that clear mandates thereof may be ignored at the convenience of either party."

In spite of these obviously correct pronouncements, and many more like them, the majority has adopted an award which has the effect of adding an ambiguous — but nevertheless destructive — exception to the telegraphers' scope rule. To say the least, such action is clearly a malfunction of the Board, in that it is an improper intrusion into the forbidden field of agreement revision.

For these reasons, and others that are obvious from a comparison of the award with the facts and contentions of the parties, I am firmly convinced that this award is erroneous, and I hereby register dissent.

J. W. WHITEHOUSE
Labor Member

**CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT
TO AWARD NO. 10531, DOCKET NO. TE-8683**

In the main, the dissent is a restatement, in part at least, of the position taken by the Labor Member and the Telegraphers' Organization in the dispute, all of which was found lacking in merit by the majority.

No purpose can be served in further arguing the issues that have been decided by the majority. The Award itself and the record upon which it was based stand as the best refutation of the position of the dissenter. The dissent does not detract from the Award.

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ D. S. Dugan

/s/ T. F. Strunck