

Award No. 10949

Docket No. TE-8009

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Roy R. Ray, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
(WESTERN LINES)**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway (Western Lines) that:

1. The Carrier violated and continues to violate the Agreement between the parties when, beginning some time in 1954, without conference of agreement it arbitrarily removed the work of transmitting wheel reports from employes covered by the Telegraphers' Agreement at El Paso, Texas, and delegated the performance of said work to persons not under the Agreement;
2. The Carrier shall restore said work to the Scope of the Telegraphers' Agreement to be performed by employes covered by said Agreement; and
3. For each and every eight hour shift, on a day to day basis, beginning January 2, 1955, that telegraphic communications work is performed at El Paso, Texas by persons not under the Agreement, the Carrier shall compensate the senior idle telegraph service employe or employes on the appropriate seniority district in an amount equivalent to a day's pay at the rate applicable to the positions under the Agreement at El Paso, Texas; and, if there be no such idle extra telegrapher, the Carrier shall compensate the senior regularly assigned employe, idle on a rest day, an amount equivalent to a day's pay at the time and one-half rate for each eight hour shift the violation occurs.

**EMPLOYES' STATEMENT OF FACTS:** An Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

The Carrier maintains a telegraph office at El Paso, Texas, in which it employs three shifts of telegrapher-clerk positions in around the clock service. The assignment of the telegrapher-clerk positions are as follows:

|              |                           |           |           |
|--------------|---------------------------|-----------|-----------|
| First shift  | 7:00 A. M. to 3:00 P. M.  | Rest days | Sat-Sun.  |
| Second shift | 3:00 P. M. to 11:00 P. M. | " "       | Sun.-Mon. |
| Third shift  | 11:00 P. M. to 7:00 A. M. | " "       | Tue-Wed.  |

on duty and under pay in the Carrier's telegraph office at El Paso, Texas, and would not have required the services of the unidentified claimants.

(b) The right to work is not the equivalent of work performed under the overtime and call rules of an agreement. See Third Division Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, 5967 and many others, all of which refused to sustain penalty claims for time and one-half rates for work not performed.

date the Employees' claim was initially submitted to the Carrier on August 29, 1954.

In conclusion, the Carrier reasserts that the instant dispute **should be either dismissed or denied in its entirety for the following reasons which are amply supported by the record:**

(1) The National Railroad Adjustment Board is without authority to consider or determine the dispute, which clearly involves a long-standing jurisdictional question on the Carrier's property.

(2) The dispute is one which may only be resolved by negotiation and tri-party agreement between the respondent Carrier, The Order of Railroad Telegraphers and the Brotherhood of Railway and Steamship Clerks.

(3) The handling complained of is not violative of any rule of the Telegraphers' Agreement, hence the Employees' claim is entirely without support under the provisions thereof relied upon by the Employees.

(4) The Employees' long delay in pressing for a final determination of the controversial issue which is the subject of the parties' disagreement requires a denial of the Employees' claim in the instant dispute.

The Carrier is uninformed as to the arguments the organization will advance in its ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are required in reply to the organization's ex parte submission or any subsequent oral argument or briefs presented by The Order of Railroad Telegraphers in this dispute.

All that is herein contained has been both known and available to the employees and their representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Prior to September 1953 clerical employees in Carrier's freight office in El Paso, Texas prepared wheel reports in long-hand or by typewriter and delivered them by messenger to the telegraph office from which they were transmitted by telegraph service employees to the parties addressed. On or about September 1, 1953 Carrier installed teletype machines in the freight office at El Paso and assigned the operation of these machines to clerical employees. The machines are connected to reperforators in the telegraph office and the clerks teletype the reports

to the telegraph office. No change in the number of clerks and telegraphers resulted from the new installation.

The Employees contend that Carrier's action violated the scope rule of the agreement because under that rule this work belongs exclusively to telegraphers.

The issue presented in this Docket has been before this Board on a number of occasions in recent years and has been decided adversely to Claimants. Dockets TE-7855, TE-7924, TE-7925, TE-8047 and TE-8007 involved exactly the same issue between the Telegraphers and the present Carrier — the only differences being as to names of Claimants and places and dates of alleged violations. In all of the above cases the Awards of this Board (8538, 9005, 9006, 9454 and 10817) held that the work of operating these teletype machines did not belong exclusively to the telegrapher. We cannot say that such awards are erroneous. Therefore they control the decision here. It follows that the claim must be denied.

**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 7th day of December 1962.