

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Texas and Pacific Railway that:

1. The Carrier violated and continues to violate Articles 1(a), 4(b) and 29 of the Agreement between the parties when, effective on or about May 20, 1954, it installed additional mechanical telegraph transmission machines in Lancaster Yard Office (Fort Worth, Texas) and failed and refused to assign the operation of said machines to employees covered by the Telegraphers' Agreement; and that

2. For each and every eight-hour shift an employee under the Agreement who has been or is being or who shall be denied the right to operate said machines, the Carrier shall be required to correspondingly compensate a senior, idle employee subject to the Agreement, extra in preference, the equivalent of eight (8) hours' pay at the rate applicable to this office.

EMPLOYES' STATEMENT OF FACTS: Article 1(a) of the current agreement effective May 15, 1950, provides:

"SCOPE. (a) This agreement will govern the working conditions and compensation of agent-telegraphers, agent-telephoners, telegraphers, telephone operators (except switchboard operators), towermen, levermen, tower and train directors, block operators, managers (except GO-Dallas), wire chiefs, wire chief telegraphers, operators of teletype or other mechanical telegraph transmission or reception appliances located in telegraph offices; staffmen, agents (freight and ticket) except those listed in Paragraph (b) of this Article, assistant agents (freight and ticket), where they have charge of a station, take the place of or perform the work of an agent, and all others named in the wage scale hereinafter referred to as employees.

"This proposal is disposed of with the understanding that **present rules and practices** are undisturbed."

Telegraphers certainly were not operating flexowriters at the time the August 21, 1954 Agreement was negotiated. Thus, Article VIII, supra, provides for the continuation of the then existing practice — undisturbed.

The Carrier asserts that for the reasons shown in 1, 2 and 3 above, this claim should be dismissed. In the alternative, it should be denied on the basis as set forth in 4, 5, 6 and 7, above.

It is affirmed that all data submitted herein in support of the Carrier's position has heretofore been presented to the Organization and is hereby made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are not disputed.

Carrier's Lancaster Yard is at Fort Worth, Texas. In the Yard Office Building is located a telegraph office, herein called "JA" office. It is located on the second floor, as is the main yard office. "JA" office is a separate office from the yard office, being separated therefrom by a three wall enclosure, and a combination wall-counter on the side facing the hall. The yard office and the "JA" office are at opposite ends of the hallway. Around the clock telegrapher service is maintained in the "JA" office, and around the clock clerical and supervisory service is maintained in the yard office.

In "JA" office there are teletype, telephone and Morse sending and receiving apparatus. In the yard office there are telephones — no teletype or sending or receiving devices. There is a typewriter in the "JA" office, and typewriters in the yard office.

From the time that Carrier first started running in and out of Fort Worth, clerks and others not covered by the Telegraphers' Agreement have always prepared wheel reports, consists, lists, etc., on such trains as were necessary. The practice goes back far beyond the turn of the century. At first the clerks made such records "with a stick." For some years prior to May 20, 1954, typewriters were used. But, regardless of what method was used, such work was usually performed by employees other than those covered by the Telegraphers' Agreement.

The consists of some trains are transmitted to other yard offices in advance of the arrival of the train. This is done in any of several ways. It is sometimes done by a telegrapher by use of Morse Code; sometimes by a telegrapher on the telephone; sometimes by a telegrapher on a teletype machine; sometimes by a clerk on the telephone; sometimes by a yardmaster or other employees by telephone or otherwise. On Carrier's property it never has been reserved exclusively to telegraphers.

Involved in this case is the handling of wheel reports and/or consists which for the sake of brevity we will refer to as wheel reports.

Immediately prior to May 20, 1954, those wheel reports transmitted by teletype were handled in this fashion: clerks, or others not covered

by the Telegraphers' Agreement, operated the typewriters on which the wheel reports were prepared; they then took a copy of the wheel report to the telegraph office where the telegraphers transmitted the necessary information.

Having installed Flexowriters in the yard office, Carrier issued instructions on May 19, 1954, that, "Effective 8:00 A.M. Thursday, May 20th, 1954, Flexowriters will be placed in operation for the typing of wheel reports and the perforation of tape as a by product." The instructions were:

"When the wheeling of a train has been completed the Clerk who typed the report will wind the tape in a manner so as to be easily handled and deliver it promptly to Operator, who will be responsible for its transmittal via teletype. In event two or more pieces of tape are perforated for a train, the pieces should be numbered consecutively before delivery to Operator — Example: Train 60 No. 1, Train 60 No. 2, and so on. The Operator will transmit the pieces of tape via teletype in the same numerical sequence.

"When transmittal of tape via teletype for each train is completed, Operator will deliver to Chief Yard Clerk, the teletype printed sheets. Chief Yard Clerk will compare the teletype sheets with the typed wheel reports for each train (or cause it to be done by Clerks) to determine whether the teletype sheets agree with the wheel reports. In event of differences a message listing the corrections to be made must be filed promptly with Operator for transmittal.

"It will be permissible to supplement typewriter for flexowriters to type wheel reports when the occasion demands when in opinion of Chief Yard Clerk it is necessary to use typewriter.

"Separate instructions have been placed in the hands of Clerks covering the method of operating Flexowriters and it will be required that all Clerks who prepare wheel reports learn to operate these machines properly."

Flexowriters are manually operated like an electric typewriter. As the clerk types the hard copy of the wheel report, the Flexowriter automatically and simultaneously perforates a tape inside the Flexowriter. **NOTE:** the clerk performs the same manual operation on a Flexowriter as he had previously done on a typewriter; he was not assigned nor did he do any work in addition to that which he had done prior to using a Flexowriter.

When the clerk finishes typing the wheel report on a Flexowriter, he removes the tape and takes it to the "JA" office — a distance of approximately 30 feet — where the telegrapher uses it for transmission purposes, instead of transmitting from a typewritten hard copy. The telegrapher transmits by use of a teletype machine in the "JA" office.

Petitioner concedes that a Flexowriter does not and cannot be used to transmit or receive messages.

Petitioner alleges that the cutting of the tape on a Flexowriter by the clerks is a violation of Telegrapher's Agreement. It cites the follow-

ing provision of its Agreement with Carrier, effective May 15, 1950, which is identical to that found in the preceding Agreement between the parties, effective May 1, 1939:

“ARTICLE 1.

“SCOPE. (a) This agreement will govern the working conditions and compensation of . . . operators of teletype or other mechanical telegraph transmission or reception appliances located in telegraph offices. . . .

“The term ‘telegraph office’ as used herein means any office where teletype or other mechanical telegraph transmission or reception appliances are installed in the future to handle intercity messages.”

Petitioner contends that on July 14, 1945, Carrier in a letter to the General Chairman acknowledged that the cutting of tape by clerks for use in transmitting messages would be a violation of Article 1(a) of the Telegrapher's Agreement. A study of the record reveals that at that time Carrier proposed to install in the yard office “teletype machines” to be used by clerks to type their reports. This proposal was rejected by Petitioner. Carrier refrained from making the installation. We do not find this material or relevant to the issue in the instant case in that it is admitted by the parties that: (1) a teletype machine transmits and receives messages; and (2) a Flexowriter does not transmit or receive messages.

Under date of January 22, 1953, the General Chairman wrote Carrier a letter, the body of which follows, since it spells out Petitioner's interpretation of Article 1(a) of the Agreement:

“I have information that the Carrier is considering or perhaps actually planning the installation of machines in the yard clerks office at Lancaster Yard (Fort Worth), which is adjacent to the telegraph office, for the purpose of cutting tape to be used in transmitting intercity business in addition to compiling train consists and etc.

“We now have two printer positions in the telegraph office at Lancaster Yard in addition to the regular Morse telegraphers, whose duties are the cutting of all tape for intercity transmission.

“This is to advise you that the use of such machines or other installations to perforate or cut tape for such transmission by employes other than those covered by the Order of Railroad Telegraphers' agreements will constitute a violation of our Scope Rule and other Rules of our Agreement and that claims will be filed and prosecuted for any violation as a result of this action.

“In further substantiation of our position, I cite you to the Second Paragraph of our Scope Rule, reading:

“The term ‘telegraph office’ as used herein means any office where teletype or other mechanical telegraph transmission or reception appliances are installed in the future to handle intercity messages.”

"Our position is that cutting or perforating tape is an integral part of the telegraphers' duties and should remain assigned to such class of employees."

The Carrier did not reply.

On July 5, 1954, the General Chairman wrote Carrier relative to the installation of the Flexowriters and said, *inter alia*:

"In my letter of January 22, 1953, referred to, I advised that the assigning and punching of tape to employees other than those subject to the Telegraphers' Agreement constitutes violations of our agreement and that claims would be filed on account of such violations. I should appreciate it if you will advise me the exact dates that this service was instituted and whether these machines are being manned by clerks or others not under our agreement. If this work is being so assigned, it is our desire and intention to file claims accordingly."

The Carrier replied under date of July 15, 1954. It said, in part:

"It cannot be denied that the main feature of the flexowriter is the preparation of the wheel reports and the incidental cutting of a tape which is done simultaneously with the wheel report cannot be considered an infringement upon the rights of the telegraphers."

The above quoted correspondence between the parties spells out their respective contentions which have remained fixed throughout the course of the dispute.

When a technological advance in the field of automation produces an instrument which performs in one operation results which were accomplished, in the past, by two or more crafts or classes, the interpretation and application of existing agreements must be decided, on a case to case basis, in the light of the agreement and the facts.

In Award No. 9313, issued in March, 1960, this Board said, "It is well settled that it is not a violation of an Agreement to install labor saving equipment even though jobs are thereby eliminated." In the record before us there is no evidence that any employee covered under the Telegrapher's Agreement lost his job because the clerks used Flexowriters.

In **Award No. 3051**, decided in December 1945, the Board in its Opinion said:

"The installation and use of the reperforator machine by the Carrier and the reduction of the work as a result thereof is not the taking of work from the scope of the Agreement within the meaning of the awards cited by the Organization. The installation of labor saving machines and devices cannot be construed as taking work from the scope of the Agreement."

There are numerous other awards of the Board which firmly establish the principles enunciated in **Awards Nos. 9313 and 3051**. For full appreciation of the breadth of these principles they should be compared to the

awards of the Board which hold that when the work of a craft or class is performed as an incident to the work of another craft or class, the Scope Agreement of the Organization having primary jurisdiction is not violated. Cf., for example, **Award No. 3524**.

We now come to applying the principles to the instant case:

Inasmuch as the clerks work remained the same after the installation of the Flexowriters as before and the tape was produced through a purely mechanical process; and, the Flexowriters could not receive or transmit messages; and, the telegraphers continued to transmit and receive messages; and, the record fails to prove that any telegrapher lost his position because of the use of Flexowriters by the clerks, we conclude that the facts do not prove a violation of the Scope provision of the Telegrapher's Agreement.

In the record, Carrier has raised a number of procedural issues; and, questions the Board's jurisdiction to entertain the Claim. We find it unnecessary to resolve these issues in view of the disposition of the Claim on the merits.

Upon the basis of the foregoing facts, authorities, and conclusions, we will deny the Claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier did not violate 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 31st day of January 1963.