

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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 the agreement between the parties when, on November 9, 1957, it declared abolished the position of second shift operator at El Paso, Texas and required and permitted work still in existence to be performed by employees not covered by the scope of the Telegraphers' Agreement.

2. Carrier shall restore the second shift operator position at El Paso, Texas and compensate Mrs. Nellie A. Mayfield for loss of wages November 9, 1957, to June 12, 1958 and compensate F. Van Sickle for loss of wages commencing June 12, 1958 and continuing thereafter until violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

El Paso, Texas is a station on the Western Division of this Carrier's lines and is the western terminus of the railroad. At El Paso, the Carrier maintains a freight yard facility known as El Paso Yard. At this freight yard there is a telegraph known as "AC" office. This telegraph office is the communication office of El Paso Yard. Communication service required at this point covers the transmission and reception of messages and reports. This includes the consists (makeup) of trains, messages concerning diversion of shipments and other related matter as well as reports to train dispatchers of the arrival and departure of trains, "call" information, etc. The telegraph office is equipped with Morse telegraph, telephone and teletype. This Carrier operates in and out of El Paso on a joint track arrangement with the Southern Pacific (T&NO). The joint track extends to Sierra Blanca, about ninety miles east of El Paso. The T&NO is the operating carrier between Sierra Blanca and El Paso, i.e., the train movements are directed and supervised by T&NO train dispatchers. Train dispatcher's telephone circuits of both carriers are in "AC" office. It is necessary to transmit to the T&NO train dispatcher the "call" information on each eastward train; this information consists of the names of each member of the crew, when each was relieved on last trip, time called for and on duty, engine

in Docket No. 8702, shows that the second trick telegrapher position is not needed at El Paso.

It does appear that the claim Petitioner intends to submit to your Board is a claim which has not been handled on the property. The Carrier will be in a better position to ascertain this after seeing Petitioner's submission.

The Carrier respectfully submits that the Board does not have the right to force the Carrier to re-establish a second trick telegrapher position at El Paso. Furthermore, we submit that Petitioner has not mentioned, and certainly has not substantiated any instance of a specific violation at El Paso. Their argument on the property was simply a broad argument to the effect that we could not pull off the job.

The Carrier submits that the Carrier has in no manner violated the agreement, and we request your Board to dismiss or deny the claim.

OPINION OF BOARD: The petitioning employees claim that when the Carrier abolished the position of second shift operator at "AC" telegraph office, El Paso, Texas, on November 9, 1957, it did not discontinue the work of that position but transferred it to employees not subject to the Telegraphers' Agreement. They contend that such acts on the part of the Carrier constitute a violation of their agreement.

They assert that the proper remedy for the alleged violation is a restoration of the abolished position and payment to two employees for loss of wages.

The Carrier defends on a number of grounds, first of which—in importance—is an assertion that the employees have not proved that any work reserved to them has been assigned to or performed by other employees in violation of their agreement.

The Carrier also contends that neither of the two employees named in the Statement of Claim is a proper Claimant because of unavailability during the periods involved; and, furthermore, that neither of them was named or identified during handling of the claim on the property.

Other grounds, such as changes in operating methods, elimination of the use of train orders, and related matters, are also urged by the Carrier as reasons for its position that the claim is without merit.

This Division is firmly committed to the principle that the party asserting violation of its right by the other must come forward with facts and evidence of probative value which are sufficient to establish support for the assertion.

The mere fact that the position in question was abolished is not enough to establish a violation of the Agreement. The employees themselves admit this when they say that they ". . . are not taking the position that the Carrier cannot, under any circumstances, abolish a position."

The Employees assert, however, that work belonging to telegraphers as a class, and formerly performed by the incumbent of the abolished position, is being performed by others. They refer in general terms to the receiving teletype machine being left in the "on" position when no telegrapher is on duty, and that "Yardmasters and clerks go into the telegraph office at inter-

vals during the off-duty hours of the operator and handle this inbound business off the teletype." They also assert that train reports—"OS reports"—are transmitted to train dispatchers.

Such assertions, if proved to be accurate and true, would require the most careful consideration of which this Board is capable. But the Carrier denies that they present a true and accurate reflection of the actual situation, thus making it necessary that the Employees, if they are to prevail, must present evidence of convincing probative value in support of their contentions.

This the Employees have failed to do. Assertion is not proof. This Board has an obligation to the public and to the parties to judge impartially. We cannot properly supply to either party an essential element which they have failed to present.

Because the Employees have not presented the element of proof required to support their assertions their claim must be denied. And since the claim is being disposed of for this basic reason, it is not necessary to discuss other aspects of the dispute.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 no proof of agreement violation has been presented.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1964.