

Award No. 12384
Docket No. TE-12932

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

1. Carrier violated the Agreement between the parties when on the following dates:

September 1, 2, 3, 4, 5, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 21,
22, 23, 24, 25, 26, 27, 29 and 30, 1959;

July 6, 7 and 8, 1960;

July 12, 15, 16, 20, 21 and 22, 1960;

July 28, 29, 30, 1960;

August 2, 3, 6, 27 and 28, 1960;

September 3, 6, 8, 9, 11, 13, 14, 17, 19, 27, 1960;

October 4, 1960;

November 30, 1960;

December 1, 2, 5, 6, 8, 13, 14, 1960;

January 6, 10 and 18, 1961;

February 16, 1961;

March 4, 18 and 23, 1961;

April 19, 22, 26, 29, 5, 6 and 18, 1961;

May 9, 11 and 12, 1961;

June 3, 5, 7, 8, 9 and 10, 1961;

It required or permitted an employe or employes, not covered by the Agreement, to perform the work of transmitting and receiving communications of record at Ocala, Florida, at a time the telegrapher was not on duty.

called messages, reports and other communications of record. The opinion of the Board in Award 4922 (Docket TE-4961) supports Carrier's position in this dispute and because that case is so directly in point, we quote here the Opinion and Findings of the Board.

"OPINION OF BOARD: The facts and the applicable provisions of the contract are fully set forth in the submissions of the parties, and need not be repeated here.

Objection is made by the Carrier that the claim presented on the property varies from the claim as submitted to the Division in that the claim presented on the property is for assignment to an employe under the Telegraphers' Agreement of the work performed on Sunday, which is of the same character as that performed by the telegrapher on week days during the regular assigned hours; while the claim before the Division is a request that the position of telegrapher at the Rook, Side-Wire Office, be made a seven-day assignment. In their essence the claims do not vary; and the submissions of the parties do not indicate any misunderstanding of the nature of the claims. The objection, therefore, that the Board does not have jurisdiction to consider claim (3) must be overruled.

The work over which this controversy arose is the handling of messages, reports and other communications of record to the dispatcher at Rook on Sundays and at night when no telegrapher was on duty in the 'BM' office at Rook. The Organization contends that this work was, by the terms of the Agreement with the Carrier, telegraphers' work and they had the exclusive right to perform it. The Carrier contends that the work described in this claim was always performed by dispatchers when the operator in the 'BM' office at Rook was not on duty.

The work to be performed by telegraphers is not enumerated in the contract and to determine what the parties intended it to be, recourse must be made to custom, tradition and the practice of the parties. It has generally been admitted that the work of transmitting communications of record relating to the operation of the railroad was the work of telegraphers; but on this property there are several factors that indicate the parties did not intend that the telegrapher in the Rook-Side Wire position would do all the work described in the Exhibits. The Agreement has established three positions for telegraphers at Rook; the Side-Wire position is in addition to these. The Side-Wire position was in existence many years prior to the negotiation of the Agreement of November 1, 1936; and the dispatchers, for as many as 40 years, have performed the work complained of when the Side-Wire operator was not on duty. Notice should also be taken of the fact that no objection to this was made by the Organization for eleven years after the Agreement of 1936 was entered into; and it was not discussed when the Agreement on March 1, 1945, relating to rest days, was negotiated.

The Side-Wire operator's work is performed at the dispatcher's office, not the telegrapher's office. When the 1936 Agreement was made, it provided that the person holding this job would 'qualify for train dispatcher.'

The dispatchers, previous to modern day inventions at least, used the telegraph in the course of the performance of their work. In the discharge of his duties, the dispatcher required information such as is contained in the train and yard reports described in Exhibits 1 and 2. In general, the reports so described are from telegraphers to the chief dispatcher.

When all the circumstances are considered, we must conclude that the parties did not intend that the telegrapher in the Side-Wire position at Rook would have the exclusive right to all work described in the submissions.

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 Employes involved in this dispute are respectively carrier and employes 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 facts of record do not show a violation of the Agreement."

The Opinion in Award 5468 (Docket TE-5516) is quoted here in part and also sustains Carrier's position that there has been no violation of the agreement on this property.

"The work performed by the train dispatcher alleged in the claim to belong to claimant as the occupant of the first trick telegrapher's position had to do with the clearances of trains at Eau Claire. The evidence describes additional work such as the obtaining of weather reports, morning reports, train consists and reports on train movements. The Carrier asserts that this is work which a train dispatcher may properly perform and that train dispatchers have performed this work for more than thirty years on this Carrier. The record does not establish that the work performed by the dispatchers on the two holidays involved belonged exclusively to the telegraphers. We think it was incidental to or a part of the work usually performed by train dispatchers. Award 4992 sustains this view. The claim must fail for want of sufficient proof that the work in question has been contracted exclusively to the telegraphers."

The attention of the Board is also respectfully called to Awards Nos. 5256, 6650, 6675, 6996, 7826 and 7916, covering similar disputes from other properties which uphold the principle that there is no violation of the agreement when train dispatchers transmit or receive messages, reports and other communications of record.

Carrier affirms, and is sure your Board will recognize, that under agreement rules on this property that the work about which complaint has been made has not been contracted exclusively to telegraphers. The position of telegrapher in train dispatching offices was established to assist the train dispatching forces, because of the volume of work, and not because the work here involved was by rule or practice contracted to telegraph service employes.

(Exhibits not reproduced.)

OPINION OF BOARD: These claims allege that Carrier violated the Telegraphers' Agreement in using the Chief Train Dispatcher and trick train dispatcher at Ocala, Florida, employees not covered by the Agreement, to perform the work of transmitting and receiving messages.

In Docket TE-10806, which involved a similar issue, we stated our reasons underlying our decision that the work in question was not the exclusive right of telegraphers. The same reasons are applicable to the instant dispute except as to the six telephone messages which were not made in relation to the work under the dispatcher's jurisdiction. These six calls are noted in the record as Carrier's Exhibit A on pages 93, 94, 105, and 107.

We hold that the Agreement was violated as to the six specific calls, but was not violated as to the rest of the claims.

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

Decision in accordance with opinion.

AWARD

Sustained in part and denied in part.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1964.