

Award No. 12705
Docket No. TE-11610

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. Carrier violated Rule 1 (Scope Rule) and Rule 18 (Seniority Rule) of the Telegraphers' Agreement when on July 2, 1958, it caused, required or permitted Clerk Jackson at Greer, S. C., and Clerk Cooksy at Gaffney, S. C., employees not covered by the Telegraphers' Agreement, to perform communication service of record by the use of the telephone at Greer, S. C., and Gaffney, S. C., respectively.

2. Carrier shall now be required to compensate J. H. Walker, regular assigned Agent-Telegrapher, Greer, S. C. and J. E. Addington, regular assigned Agent-Telegrapher, Gaffney, S. C., one call each (two hours and forty minutes) at punitive (time and one-half) rate of pay, for the work denied them account this violation. The present rate of pay at both Greer and Gaffney being \$2.4150 per hour, this claim total \$9.66 of each Mr. Walker and Mr. Addington.

EMPLOYEES' STATEMENT OF FACTS: Claimant J. H. Walker is the regularly assigned agent-telegrapher at Greer, South Carolina. At the time the claim arose in July of 1958, his negotiated rate of pay was \$2.4150 per hour. He had assigned hours of 8:00 A.M. to 5:00 P.M., excluding meal period, and his assigned workweek was Monday through Sunday, with Saturday and Sunday as assigned rest days.

Claimant J. E. Addington is the regularly assigned agent-telegrapher at Gaffney, South Carolina. His negotiated rate of pay for that position at the time the claim arose in July of 1958, was \$2.4150 per hour. He had assigned hours of 8:00 A.M. to 5:00 P.M., excluding meal period, and his assigned workweek was Monday through Sunday, with Saturday and Sunday as rest days.

On Wednesday, July 2, 1958, at 6:27 P.M., Clerk Jackson, an employee under the Clerks' Agreement, performed the following work in transmitting the communication of record as follows:

the Carrier's rules and working conditions agreement with the representative of Station, Tower and Telegraph Employees. No train order shall be countermanded or modified by radio or any other means except by a superseding train order handled as required by this rule. **All communications reporting upon the movement or expected movement of trains or governing the movement of other track vehicles shall be handled in writing and only by and through employees authorized to handle train orders under this rule.** In any case of violation of this rule all employees who would have handled the communication had this rule been observed and all employees who were required to handle a communication in violation of this rule shall be paid an additional day's pay at the rate of his position." (Emphasis ours.)

The current agreement between the parties became effective on September 1, 1949. In the Section 6 Notice served on the carrier in 1947 (which was before the effective date of the agreement) and in 1958 (which was 9 years after the effective date of the agreement), the ORT requested that the carrier confer upon the telegraphers a monopoly on the handling of train orders, lineups, so-called reports of record and other communications. They obviously were seeking a right which they recognized employees of the telegraphers' class or craft did not have, either before or after the effective date of the current agreement. No such rules were ever negotiated by the parties. The ORT conceded in these Section 6 Notices that they do not have the right they are now claiming in this dispute. If such was true, a telegrapher would have to be assigned to every telephone on carrier's property.

Thus, it is evident that the claim now before the Board is not supported by the effective agreement, and that it is nothing more than an effort by the employees to obtain through the Adjustment Board what they failed to obtain in negotiations with the carrier as required by the Railway Labor Act. As a matter of fact, even the employees' proposals dealt with messages of record "in connection with train movement" and not to other communications. The Third Division has stated many times that its function and authority under the Railway Labor Act is to interpret the applicable rules of the agreements in effect between parties to disputes, not to abrogate, change or make rules for the parties.

The evidence of record discloses that there was no violation of the agreement, and that the work in question is not reserved to telegraphers. For the reasons set forth herein, carrier respectfully requests that the claim be denied in its entirety.

OPINION OF BOARD: The claim alleges a violation of the effective Agreement because clerks at Gaffney and Greer called the telegraph operator at Greenville and gave him messages addressed to the yardmaster and chief dispatcher at Greenville requesting cars to be placed at the respective stations for peach loading.

An agent-telegrapher was employed at Gaffney and another one at Greer, the former 7:30 A. M. to 4:30 P. M., Monday through Friday; the latter 8:00 A. M. to 5:00 P. M., Monday through Friday. There is one clerk at each of the two locations, each assigned to an 8:00 A. M. to 5:00 P. M. schedule, Monday through Friday. One of the two messages in question was phoned from Greer at 6:27 P. M., the other from Gaffney at 11:15 P. M. by the respective clerks on Wednesday night, July 2, 1958, when both telegraphers were not on duty.

The existence here of a general Scope Rule requires us to examine the evidence in terms of whether the work in issue should be deemed to have been exclusively within the province of the Claimants by reason of custom, tradition and practice.

The parties say on this subject in their respective Submission statements to this Board, as follows:

The Petitioner:

"By custom and tradition the work of handling, which includes the transmitting and receiving of train orders, reports and messages of record, belongs to the class of employees designated as telegraphers." There follow references to "clarification" of said tradition and custom by the Director General of Railroads during World War I through the issuance of Supplement No. 13 to General Order No. 27, and Interpretation No. 4 thereof; and also to Decisions of the United States Railroad Labor Board which "recognized the same right to the performance of this work" and to various awards of this Board supporting this position.

The Carrier:

". . . the messages in question, which were requests for cars to be placed at the respective stations for peach loading the following day, have for many many years been telephoned by clerks in the routine performance of their agency duties, and is not a type of work belonging exclusively to telegraphers, . . ."

and

"Clerks Cooksy and Jackson have worked at Gaffney and Greer for a period of many years, and they have phoned in car orders on numerous occasions, both while the agent was on duty and at the station and while he was off duty or away from the station performing other agency work."

In making our evaluation of the worth of these respective and conflicting allegations, we must take into consideration the following:

1. Neither of the statements is supported by first-hand documentation or other proofs.

2. The Petitioner's statement is general, not representing itself as addressed to the practices on this system or division or at these locations. The Carrier's statement addresses itself to the practices at the locations and for the employees here involved.

3. In the course of the correspondence between Petitioner and Carrier, which preceded the submission of this dispute to this Board, the Carrier stated through its Assistant Director of Labor Relations: "Clerks Jackson and Cooksy also state that their functions during the 1958 peach shipping season were no different than they were in previous years."

The Petitioner responded to this in its letter to the Carrier, dated December 18, 1958, by stating ". . . we deny that clerks have performed this type of work since the advent of the telephones on the property."

The record shows also an allegation by the Carrier that in the specific circumstances under which these two messages were sent, the two clerks were acting under orders of the two agent-telegraphers. Although this statement is specifically made by the Carrier in two separate communications to the Petitioner (ORT Exhibit No. 5, Page 15 of Record, and ORT Exhibit No. 8, Page 17 of record), Petitioner does not meet this claim in either its correspondence with the Carrier or in its statements to us, maintaining complete silence on this subject.

Our evaluation of the foregoing is that the Petitioner has failed to meet its burden of showing, by convincing evidence, that under the circumstances here present, the work in question belonged exclusively to the Claimants by tradition, custom and practice.

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 2nd day of July 1964.