

Award No. 13163
Docket No. TE-12032

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Ables, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WESTERN PACIFIC RAILROAD COMPANY

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

1. The Carrier violated the parties' Agreement when commencing May 6, 1959, on termination of the joint facility office at "UN" Telegraph Office, Salt Lake City, Utah, it permitted the transfer of work of handling (receive, copy and deliver) Western Pacific train orders, clearance cards, messages, etc., in connection with the operation of Western Pacific trains from Salt Lake City, Utah, to D&RGW Train Dispatchers.

2. The Carrier shall, so long as the violation set forth above continues, pay to "John Doe", otherwise identified as the senior idle telegrapher, extra in preference, a day's pay for each eight (8) hour shift around-the-clock. The identification of "John Doe" and the amount due such claimant or claimants to be determined by a joint check of the Carrier's records.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective June 16, 1940, revised to January 1, 1953, and as amended. Prior to May 6, 1959, the Western Pacific maintained a jointly operated telegraph office with the D&RGW in the Union Depot at Salt Lake City. This office was identified by the call letters "UN". D&RGW telegraphers were maintained on an around-the-clock basis in the "UN" telegraph office. A part of the duties of these telegraphers was the handling (receiving, copying, and delivering) of train orders, clearance cards and messages to westbound Western Pacific first class trains, in addition to similar duties performed for D&RGW. For such services, the Western Pacific participated in partial payment of the telegraphers' salaries. This joint operation had been in effect for many years.

Effective 4:01 P.M. on Wednesday, May 6, 1959, this joint facility arrangement was terminated, with the result that the work performed by the joint facility telegraphers in "UN" (Western Pacific-D&RGW), whose positions were abolished, was turned over to D&RGW train dispatchers, who thereafter performed the work of handling train orders, messages, issued by

by virtue of a Joint Facility Agreement which has been in existence since 1908, has been and still is performed by employees of The Denver & Rio Grande Western Railroad Company. This fact produces two inevitable results: (1) It makes said Denver & Rio Grande Western employees "involved" in the dispute, as that word is used in Section 3, First (j) of the Railway Labor Act and therefore entitled to notice of hearing, and (2) it conclusively determines this claim on its merits adversely to petitioner inasmuch as there can be no violation of petitioner's agreement with respect to work not embraced by that agreement. Carrier therefore reiterates its motion to dismiss unless and until the statutory conditions precedent of Section 3, First (j) to acquisition of jurisdiction by your Board are complied with and, without prejudice to that motion, strongly urges that the claim be denied on its merits.

OPINION OF BOARD: This claim must fail because the employees have not shown that the work in dispute was reserved to them, or even that the Telegraphers' Agreement with the Western Pacific Railroad covered the employees concerned in the dispute.

Under a 1910 agreement between the Denver and Rio Grande Western and the Western Pacific Railroads, telegraphers of the D&RG handled necessary train orders for the Western Pacific at the Salt Lake City terminal. In 1959, in accordance with the agreement between the D&RG and its employees, the D&RG substituted dispatchers for telegraphers to handle this work.

Clearly, as the carrier here maintains, the Western Pacific Telegraphers' Agreement does not apply to telegraphers or train dispatchers employed by the D&RG at Salt Lake City or Roper, Utah, since any business handled there for the Western Pacific is handled by employees of the D&RG and the contract between the D&RG and the Western Pacific does not authorize the Western Pacific to interfere with schedule provisions of the employees who perform both Western Pacific and D&RG work at these locations.

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 15th day of December 1964.