

Award No. 13244
Docket No. TE-11869

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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 the Telegraphers' Agreement when, on the 25th of November, 1958, it caused, required or permitted the yardmasters at Dundee, Virginia to move into the office at Dundee, Virginia from which the clerk-telegrapher positions had been abolished effective with November 22, 1958, and assume duties which had previously been performed by the clerk-telegraphers in that office. Rule 36 of the Telegraphers' Agreement has been violated by allowing the telephone facilities used by railroad employees to remain in the Dundee, Virginia office for use by the yardmaster.

2. Carrier shall compensate the following employees who have been made idle by the aforesaid violations:

B. D. Overbee, idle extra employee, Danville Division Seniority District, eight hours each day for work performed on the first trick clerk-telegrapher's position by yardmaster, November 25, 1958, through January 1, 1959, inclusive, and for all subsequent days the violation is permitted.

D. L. Hayes, idle extra employee, Danville Division Seniority District, shall be compensated eight hours each day for work performed on the second trick clerk-telegrapher's position by a yardmaster, November 25, 1958, through January 1, 1959, inclusive, with the exception of December 9, 1958, on which date he was employed elsewhere, and for all subsequent days the violation is permitted.

J. W. Overbee, idle extra employee Danville Division District, shall be compensated eight hours each day for work performed on the third trick clerk-telegrapher position by a Yardmaster; November 26th, 1958 through January 1, 1959, and for all subsequent days the violation is permitted.

T. C. Evans, idle extra employee, Danville Division Seniority District, shall be compensated eight hours for work performed on the second trick clerk-telegrapher's position by a yardmaster, December 9, 1958, and eight hours for work performed on the third trick clerk-telegrapher's position by a yardmaster on November 25, 1958.

Compensation for all claimants shall be at the rate of \$2.4150 per hour, the rate established for clerk-telegrapher positions Dundee, Virginia, prior to November 22, 1958.

EMPLOYEES' STATEMENT OF FACTS: The main line of the Richmond Division Railroad goes through Danville, Virginia. At Danville, Virginia is located a passenger station eight tenths of a mile from Dundee Tower, Virginia. The Carrier, at Dundee, Virginia, maintained a telegraph office for more than forty years with a first, second and third shift positions designated as clerk-telegrapher positions.

There is an Agreement in effect between the Southern Railway Company and The Order of Railroad Telegraphers with rates effective September 1, 1949 and rules revised as of September 1, 1949. At page 67 of the Agreement is listed the Danville Division and the following negotiated positions:

Station: Dundee
Position: 3 Clk-Telg.
Rate: \$160.50

Station: Danville
Position: 3 Clk-Telg.
Rate: \$166.50

The following is a rough sketch of the location of both Dundee, Virginia and Danville, Virginia.

September 1, 1949, and that no work of the abolished positions was assumed by yardmasters or others not covered by the Telegraphers' Agreement. The evidence of record completely contradicts the allegations contained in the statement of claim and clearly supports carrier's position that there was no violation of the agreement. For the reasons stated, the claim should be denied in its entirety, and carrier respectfully requests that the Board so decide.

(Exhibits not reproduced).

OPINION OF BOARD: This dispute arose from Carrier's abolishment of three clerk-telegrapher positions at Dundee tower, Danville, Virginia on November 25, 1958. Prior to this date Carrier maintained a yard office at Dundee in a single story frame building from which the yardmasters operated. In addition, approximately 50 feet from this building, Carrier had a two story brick building which housed interlocking equipment on the first floor and a control board on the second floor where telegraphers operated the signals and switches for the movement of trains and switches through the interlocking facilities.

On July 7, 1958, the Interstate Commerce Commission approved changes in Carrier's automatic block system and authorized the discontinuance of the electrical interlocking plant at Dundee. Carrier substituted manual operation of switches. It removed the electrical interlocking equipment from the first floor of the two story brick building and the control board and other equipment from the second floor. It remodeled the building and moved the yard office, including personnel and equipment, into this location. The yardmaster was assigned to the second floor and the chief clerk and train clerks to the first floor. The frame building was demolished. Carrier installed a pneumatic tube between the new yard office and the telegraph office located at the passenger station at Danville. Upon making these changes, Carrier abolished the positions of the three clerk telegraphers at Dundee.

Since November 25, 1958, all train orders and messages are handled by the clerk-telegrapher at the Danville passenger station. Crews from trains passing the station receive orders from the telegrapher via a train order transmitter hook. The conductors of the Richmond Division freight trains and the Danville Division trains, which do not pass the passenger station, are sent orders via the pneumatic tube at the new yard office.

Organization contends that a significant portion of the work now performed by the yardmaster at the Dundee tower belonged to the three clerk-telegraphers whose positions were abolished. Such a unilateral abolishment of positions, it maintains, is in violation of the Agreement. It relies primarily upon the Scope and Rules 31 and 36 to support its position. It argues that the yardmaster who reports the arrival and departure of trains by telephone to the dispatcher, and allegedly removes orders from the pneumatic tube to be delivered to the crews of trains that do not pass the passenger station, performs telegrapher work, which, under the Scope belongs to employees subject to the Agreement. It also takes the position that Rule 31 guarantees to the telegraphers at Danville the exclusive right personally to deliver train orders wherever they may be required within the station area. Since it regards the tower as within the station area, it asserts that Carrier violated Rule 31 by employing a tube and/or yardmasters to transmit or deliver train orders to crews. Organization further maintains that Carrier failed to comply with Rule 36 because it did not remove all communication facilities when it converted the tower into a yard office.

This dispute involves the question of whether the yardmaster is now performing work formerly done by the clerk-telegraphers whose positions were abolished and the question of whether the use of a pneumatic tube between the passenger station and yard office for transmission of train orders constituted a violation of the Agreement. In other words, in the handling of train orders does the Agreement require physical delivery by the telegrapher to the train crews addressed?

We have examined the allegations and the evidence presented by Organization that the work performed by the yardmaster is the same work done by the clerk-telegraphers before their positions were abolished. Organization points to the telephone communication system which it states Carrier continued to maintain in the tower and to the radio communication system allegedly added, to support its contention that the yardmaster was performing the duties heretofore carried out by the clerk-telegraphers. It also presents records of yardmaster conversations with the train dispatcher concerning arrival and departure of trains in which this communication equipment was used. There is disagreement between the parties as to the equipment removed from the tower. Carrier insists that the entire interlocking plant, including the control board and electrical mechanism was removed and that the Morse telegraph wires plus all telephones attached to circuits to Richmond and Danville and to the yard line were taken out. On the other hand, Organization maintains that the circuits used by the telegraphers remained and, therefore, Rule 36 was violated.

We are satisfied from the record that the telegraphic equipment and the telephone instruments used by the clerk-telegraphers were removed. We, therefore, find that Rule 36 was not violated. As to the circuits that remained, these are not used for telegraphy purposes by the yardmaster. Telephone and radio facilities were included in the equipment of the yardmaster when he occupied the wooden structure. Yardmaster employes in the past conversed by telephone with dispatchers on the subject of train arrivals and departures, and in their new location merely continued to carry on the same activities.

We also do not find support for Organization's contention that these telephone conversations between the yardmaster and train dispatcher about train movements indicate that these employes perform the work of the abolished clerk-telegrapher positions and, therefore, are a violation of the Scope. The Scope Rule does not describe the work covered; it merely lists by title classes of employes. Organization has the burden of finding support for its contention that the telegraphers have the exclusive right to the work in tradition, custom, and historical practice. On the contrary, the record shows that yardmasters customarily used the telephone to report to dispatchers on train movements.

Organization acknowledges that the record is inconclusive as to whether the conductor or the yardmaster picks up the train orders from the pneumatic tube, but it emphasizes that even if the conductor does do this personally,—and it asserts the yardmaster more likely does this,—in either case there is a violation of Rule 31. With the abolishment of the three clerk-telegrapher positions, the telegrapher at the passenger station performs the same telegraphic duties as before, except that he places the train orders in a pneumatic tube instead of delivering them personally. Rule 31 provides that:

“No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can promptly be located. . . .”

Since there is no telegraph office at the tower, Rule 31 is not applicable. The use of the tube system has already been considered in Award No. 30, Special Board of Adjustment No. 305, and in Award No. 9988. In the Special Award the Board held that where telegraphers dispatched train orders addressed to crews through a pneumatic tube connected with a yard office, and these were received by the crew, there was no violation of the Agreement. In Award No. 9988, involving the pneumatic tube and a rule comparable to Rule 31, the Board held that personal delivery by telegraphers was not required; and the Rule was found not to have been violated. It furthermore held that the Scope did not give to telegraphers the responsibility for personal delivery of the train orders to crews. Award No. 12150 also held that the Scope Rule, being general in character, does not confer exclusivity in performance of physical delivery of messages to train crews.

In conclusion, the record does not show that the yardmaster assumed the duties of the abolished clerk-telegrapher positions, nor was there a violation of the rules of the Agreement in the use of a pneumatic tube for transmission of train orders addressed to crews to the yard office. We, therefore, hold that the Agreement was not violated.

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

The Agreement of the parties 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 29th day of January 1965.

DISSENT TO AWARD 13244, DOCKET TE-11869

In my dissent to Award 13243 I remarked on its inconsistency with Award 13244. Further inconsistency is immediately revealed by a comparison of the present award with Award 12781, also involving these same parties and agreement.

In Award 12781 the Carrier prevailed with an uncontroverted assertion that:

" . . . the parties have specifically agreed that at points where only one telegraph office is maintained, the term 'telegraph or tele-

phone office' as used in Rule 31 (Handling Train Orders) extends to the station limits of the point and not merely to the confines of the telegraph office itself."

Now, in Award 13244, this Board says that:

"... Since there is no telegraph office at the tower, Rule 31 is not applicable . . ."

And this in the face of clear statements in the record, including one by the Carrier itself, that "the tower" is in the same station limits with the telegraph office from which the train orders were dispatched to the tower.

Thus in both awards, the rule is interpreted and applied in favor of the Carrier although the facts required diametrically opposite conclusions.

Aside from its inconsistency with other awards involving the same parties Award 13244 is "palpably erroneous" in both its findings of facts and resolution of issues.

The conclusion that Rule 36 was not violated, based on a finding that: "... the telegraphic equipment and the telephone instruments used by the clerk-telegraphers were removed.", is one example in point.

The rule plainly provides that when a telegraph or telephone office is converted to non-telegraphic use "... all railroad telegraph and telephone facilities used by railroad employes shall be removed from such office." Removal of the instruments is not compliance with the rule when other instruments are immediately installed and connected to the same circuits formerly used by the telegraphers. The facilities were not removed. The rule was thus violated, and the award as noted is therefore "palpably erroneous".

It is equally erroneous on other counts, such as the finding that the yard forces are not performing telegraphers' work when they communicate with the train dispatcher about train movements. Even granting that the Employes could have done a better job of informing the Board exactly what was communicated, there was no excuse for the erroneous decisions.

For these and other obvious reasons, I dissent.

J. W. WHITEHOUSE
Labor Member