

Award No. 13442
Docket No. TE-11837

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY
(Wheeling and Lake Erie District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York, Chicago & St. Louis (Wheeling and Lake Erie District) Railroad that:

1. The Carrier violates the Agreement between the parties hereto when, on April 28, 1958, it declared abolished the Telegrapher-Clerk position at Massillon, Ohio, without in fact discontinuing the work thereof, which it assigned to employees not covered by the scope of said agreement.

2. The Carrier shall, because of the violation set out above, restore the work to the agreement and the position purportedly abolished to its former occupant, L. Wagner.

3. The Carrier shall, in addition to the foregoing, compensate L. Wagner in accordance with the provisions of Rule 11 of the parties' Agreement, and the following employees who were also improperly displaced by reason of the Carrier's violative act:

(a) D. G. Gardner, displaced from Manager-Telegrapher position, Brewster 'D' Office, by L. Wagner.

(b) R. Tittle, displaced from No. 15 Relief Telegrapher Position, Canton Yard, by D. G. Gardner.

(c) Paul Schlosser, displaced from No. 5 Relief Telegrapher Position, Norwalk, Ohio, by R. Tittle.

(d) W. E. Hupp, displaced from third-shift Telegrapher Position, Norwalk, Ohio, by Paul Schlosser.

(e) D. Griffiths, displaced from third-shift Telegrapher-Clerk Position, Georgetown, Ohio, by W. E. Hupp.

(f) R. W. Coleman, displaced from second-shift Telegrapher Position, Pine Valley, Ohio, by D. Griffiths.

4. John Kovach, senior idle extra telegrapher, who was displaced from third-shift Telegrapher position at Adena, Ohio, by R. W. Coleman, to the Telegraphers' extra board, shall be compensated a day's pay for each day displaced from his regular position as a result of the Carrier's violative act.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective February 1, 1951, as to the rates of pay, and February 1, 1952, as to the rules, and as amended.

At page 58 of the Agreement, under the captions, "Location", "Position", "Hourly Rate", is listed the position existing as Massillon, Ohio on the effective date of said agreement. The listing reads:

Location	Position	Hourly Rate
Massillon	Telegrapher-Clerk	\$1.650

In the Agreement between these same parties, effective February 1, 1917, at page 12 of the Agreement, under the captions, "Location", "Position", "Rate Per Month", is the position at Massillon on the effective date of this Agreement. The listing is:

Location	Position	Rate Per Month
Massillon	Telegrapher-Clerk	\$70.00

The foregoing listing indicates that the position of Telegrapher-Clerk at Massillon has been covered by the parties' Agreement for forty-three years.

Prior to April 28, 1958, L. Wagner was the regularly assigned occupant of the Telegrapher-Clerk's position at Massillon, Ohio. As such he handled all of the communication of record work arising at Massillon, namely: sending and receiving messages and reports (OS'ing) trains and handling (receive, copy and deliver) train orders. Messages, such as train line-ups, were handled by claimant Wagner in accordance with the prescribed rules on Form 294, which required, "Copy of this form to be delivered to employee in charge of track cars or other equipment and original signed copy retained by operator." Attached hereto and made a part hereof as ORT Exhibits 1 through 10, are specimen copies of line-ups as here described.

In addition to the communication work which was substantial, the occupant of the Telegrapher-Clerk's position at Massillon performed clerical work in connection with the making of freight bills, which involves a summary statement of each way bill, including the weight, rate and charges for presentation to the consignee, or in the case of prepaid freight charges to the consignor for payment of carrying charges. In addition to this, other clerical work was assigned to the Telegrapher-Clerk's position to fill out his time not otherwise utilized to perform the communication work at Massillon.

The record indicates that the Telegrapher-Clerk's position was a part of the parties' Agreement prior to 1917, and that this Telegrapher-Clerk had performed the enumerated clerical duties from about 1927 to the date on which the Carrier purportedly abolished his position, namely April 28, 1958,

of each assignment held on April 28, 1958, in perpetuity. This Board has consistently held that it will not order the restoration of positions nor pyramid penalties, and neither can it consistently hold that the rest days, hours, and working conditions of an employe holding an assignment will follow him to subsequent assignments properly acquired in the exercise of seniority rights.

The claim identified as Part 4 is likewise too remote to entitle the claimant to the remedy sought by the Employees.

For the reasons set forth herein, the claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 28, 1958 Carrier abolished the Telegrapher-Clerk position at Massillon, Ohio. Claim is made that in doing so Carrier did not, in fact, discontinue the work thereof but transferred the remaining work to clerks. Involved are three kinds of work. (1) Obtaining line-ups over the commercial telephone, (2) Carrying messages and car reports by auto, and (3) expensing freight bills.

In support of its position the Organization relies on Rule 1—Scope, Rule 2—New Positions—Classifications, and Rule 26—Handling Train Orders.

With respect to the securing of line-ups the Organization relies on Award 9952 on this property. This Award was admittedly based upon practice on other railroads and not upon the practice on this property. The present record contains much evidence that for 40 years line-ups have been copied by employes other than telegraphers. Award 9952, while agreeing that the Scope Rule did not reserve this work to the telegraphers and that resort should be had to tradition, historical practice and custom, did not decide that the tradition, practice and custom on this property favored the grant of exclusivity to ORT. In the face of the record of practice on this property, we are obliged to find that such work was not the exclusive work of ORT.

Reference was made by the Organization to the practice at this station as supporting its contention as to exclusive practice. We are, however, concerned with the interpretation of an Agreement which is system-wide and the history of practice should be equally system-wide. Award 11526 (Dolnick) and others.

Claimant also relied on Rule 26 which reads as follows:

"It is not the disposition of the Railroad to displace employes covered by this Agreement by having trainmen or other employes operate the telephone for the purpose of blocking trains, handling train orders or messages. This does not apply to train crews using the telephone at the ends of passing sidings or spur tracks in communicating with the operator."

It argues that line-ups are messages and therefore specifically embraced within the confines of the Rule. With this we cannot agree. What constitutes messages the Rule does not define. It most certainly does not purport to cover all communication concerning trains and since it is somewhat ambiguous an inquiry into practice is necessary in order to determine the intention of the framers. This inquiry is, however, no different from the inquiry as to practice made in relation to the Scope Rule. Claimant's argument is, therefore, not improved by reference to Rule 26.

With respect to carrying messages and reports by auto, we have frequently held that absent a rule which specifically reserves such work to certain employees or a practice, history or tradition which raises the implication that it is reserved, Carrier may assign such work to other employees.

We recently held, in Award 13189 on this property, that Rule 26 did not specifically reserve to the telegraphers the exclusive right to transmit all messages, only those of the type that a specific Rule or practice can be said to imply such a reservation. The emphasis was on the type of message, not the means used to communicate. Unless the type of message can be said to have been reserved, no rights of exclusivity can arise. It may not arise merely out of the method used, nor can Carrier be required to use a particular method of communication merely because it did so before. Employees of a Carrier communicate in various ways, by word of mouth, telephone, telegraph and the mail, to mention a few. To require them to confine their communicating to the method they previously used has no sanction in either the rules, practice or common sense.

It follows that there is no merit in the objection to Carrier's method of transporting messages by auto that Carrier never did so before.

With respect to the clerical work, the Organization does not claim an exclusive right. It argues that this work was part of Claimant's position and although Carrier may abolish the position if there is no work, it may not abolish the position if the work remains.

We have held that in abolishing a telegrapher position, whatever clerical work remained, having been assigned in the first instance to eke out the telegrapher's day, reverts to the clerks when his primary duties no longer exist. See Awards 7073, 8662, 9344 and many others.

It does not appear that any work which was exclusively that of ORT's remained. The reassignment of remaining Clerical duties was therefore not improper.

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 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 3rd day of March 1965.