

Award No. 13614
Docket No. TE-12647

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Colorado & Santa Fe, that:

1. The Carrier violated the terms of the Agreement between the parties when, on December 14, 1959, it unilaterally declared abolished the 7:45 A.M. to 3:45 P.M. ticket agent-telegrapher-printer clerk position and the 10:00 A.M. to 6:00 P.M. telegrapher-printer-clerk position at the Passenger Station at Brownwood, Texas, and assigned work of these positions to the freight agent and clerical employees not covered by the Telegraphers' Agreement.

2. Carrier further violated the terms of the Agreement between the parties when, on or about November 1, 1959, it refused and continues to refuse to assign to employees covered by said Agreement the duties of operating a data-fax machine used for transmitting messages and reports located in the Passenger Station at Brownwood.

3. The work comprising the 7:45 A.M. to 3:45 P.M. ticket agent-telegrapher-printer clerk position and the 10:00 A.M. to 6:00 P.M. telegrapher-printer clerk position at the Passenger Station at Brownwood shall be restored to the Agreement.

4. Carrier shall now be required to compensate E. E. Geer for eight hours' pay at the rate of the 7:45 A.M. to 3:45 P.M. ticket agent-telegrapher-printer clerk position at the Passenger Station at Brownwood each work day.

5. Carrier shall now be required to compensate F. A. Connell for eight hours' pay at the rate of the 10:00 A.M. to 6:00 P.M. telegrapher-printer clerk position at the Passenger Station at Brownwood each work day, in addition to pay at the time and one-half rate for work performed outside the assigned hours of the 10:00 A.M. to 6:00 P.M.

telegrapher-printer clerk position at the Passenger Station at Brownwood.

6. Carrier shall now be required to compensate R. H. Smith, regular incumbent Relief Position No. 18, for eight hours' pay at the rate of the 7:45 A.M. to 3:45 P.M. ticket agent-telegrapher-printer clerk position at the Passenger Station at Brownwood each Saturday and Sunday, and eight hours' pay at the rate of the 10:00 A.M. to 6:00 P.M. telegrapher-printer clerk position at the Passenger Station at Brownwood each Monday and Tuesday, in addition to pay at the time and one-half rate for work performed outside the assigned hours of the 7:45 A.M. to 3:45 P.M. ticket agent-telegrapher-printer clerk position at the Passenger Station at Brownwood each Saturday and Sunday, and pay at the time and one-half rate for work performed outside the assigned hours of the 10:00 A.M. to 6:00 P.M. telegrapher-printer clerk position at the Passenger Station at Brownwood each Monday and Tuesday.

EMPLOYEES' STATEMENT OF FACTS: Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

This dispute concerns the Carrier's unilateral abolishment of the 7:45 A.M. to 3:45 P.M. Ticket Agent-Telegrapher-Printer Clerk position and the 10:00 A.M. to 6:00 P.M. Telegrapher-Printer Clerk position, without in fact abolishing the work thereof, installing a mechanical telegraph machine (Facsimile), at the Passenger Station at Brownwood, Texas, and assigning the operation thereof to employees outside the Agreement, and the transfer of work formerly performed by the occupants of the abolished positions to the Freight Agent and Clerical employees not covered by the Telegraphers' Agreement.

Prior to December 14, 1959, the station force at the Passenger Station Telegraph was:

Position	Assigned Hours
Ticket Agent-Telegrapher-Printer Clerk	7:45 A.M. to 3:45 P.M.
Telegrapher-Printer Clerk	10:00 A.M. to 6:00 P.M.
Telegrapher-Printer Clerk	3:45 P.M. to 11:45 P.M.
Telegrapher Printer Clerk	10:00 P.M. to 6:00 A.M.
Telegrapher-Printer Clerk	11:45 P.M. to 7:45 A.M.

Relief Position No. 18 Ticket Agent-Telegrapher-Printer Clerk with the following assignment: Saturday and Sunday 7:45 A.M. to 3:45 P.M. Ticket Agent-Telegrapher-Printer Clerk, Monday and Tuesday 10:00 A.M. to 6:00 P.M. Telegrapher-Printer Clerk, Wednesday 3:45 P.M. to 11:45 P.M. Telegrapher-Printer Clerk.

The assigned duties of the Ticket Agent-Telegrapher-Printer Clerk prior to December 14, 1959, consisted of:

- (1) Selling rail and pullman tickets
- (2) Handling calls over telephone quoting rates, routes and schedules of trains
- (3) Checking and delivering baggage

sation, it will be obvious that the penalties claimed in behalf of the three claimants in the instant dispute are not only excessive but also disregard the Board's awards on the subject and constitute an attempt to have the Board assess the Carrier with punitive damages for an alleged violation of the governing agreement where none exists. In discussing a claim for penalties in an amount of eight hours at time and one-half rates for each day an alleged violation existed, the majority had the following to say in Award No. 7309 regarding the assessment of punitive penalties in the absence of a specific rule as support therefore:

"The assessing of the penalty claimed would be an extremely drastic measure to be invoked and one of doubtful legality under the rules of the Agreement, as no specific rule can be used as a basis for such an award. The measure of compensation used in similar cases in awards of this Division of the Board, under rules as here before us, has been on the theory of making the injured employe whole and as this has been done we conclude (b) of the claim must be denied."

The Petitioner has not and cannot point to any specific rule of the governing Telegraphers' Agreement which serves to support the excessive penalties claimed in behalf of the claimants in the instant dispute.

Moreover, the Petitioner's claim in behalf of Messrs. Connell and Smith in Items (4) and (5) of the Employes' Statement of Claim for eight hours additional pro rata compensation, plus time and one-half for work performed outside the assigned hours of the positions Messrs. Connell and Smith occupied at Brownwood prior to December 14, 1959, is an obvious attempt to assess the respondent Carrier with double or pyramided penalties for the same alleged violation which the Third Division has repeatedly held are improper and has refused to consider. Awards 3146, 4710, 5333, 5652, 6021 and others.

In conclusion, the Carrier respectfully reasserts that the Employes' claim in the instant dispute is wholly without merit or support under the rules of the governing Telegraphers' Agreement and should be either dismissed or denied in its entirety for the reasons set forth in this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier rearranged and modernized its yard facilities at Brownwood, Texas. A new yard office was constructed and the passenger station remodeled. A Data-Fax machine was installed to transmit messages between the passenger station and yard office.

The Carrier contends that much of the telegrapher's work ceased when the telegraph equipment was removed from the passenger station. The Carrier rearranged its work force which resulted in the net loss of one position.

The Petitioner contends that the Carrier could not abolish any of the positions, that the work remained and is being performed by others not covered by the Telegraphers' Agreement to operate the Data-Fax machine.

The Carrier has the right to abolish positions and to rearrange the work force. The record discloses that much of the work was no longer necessary to

be performed. The remainder of the work was assigned to others. The Petitioner has failed to prove that such work belonged exclusively to them.

This Board has held that in order to establish its right to perform work the Organization must establish that it has performed the work exclusively. Herein, the Petitioner alleges that its employes performed the work in the past. There is no proof of exclusivity.

There is no evidence to sustain a finding that the operation of a Data-Fax machine was work exclusively performed by employes under the 'Telegraphers' Agreement. It is evident that such machine does not replace the telegraph instrument.

We fail to find proof of a violation of the Agreement.

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 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 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 26th day of May 1965.