

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE

TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)THE CINCINNATI, NEW ORLEANS AND
TEXAS PACIFIC RAILWAY COMPANYSTATEMENT OF CLAIM: Claim of the General Committee of The Order
of Railroad Telegraphers on the Southern Railway, that:

Carrier violated the provisions of the Telegrapher's Agreement, when effective 11:00 P. M. Saturday, November 18, 1961, it abolished the first, second and third trick Telegrapher-Levermen positions "GF" Tower, Oakdale, Tennessee and by abolishing these three positions it caused the rest day relief position Telegrapher-Leverman, "GF" Tower, Oakdale, Tennessee to be abolished. This arbitrary action of the Carrier was carried out when it was known that the communication work required on the positions since time immemorial, and the type of communication work claimants, (Telegraphers) had been performing on the positions herein referred to prior to date of abolishment, remained to be performed and that after effective date of abolishment it required and permitted employees not covered by the Telegrapher's Agreement to perform the communication work and other duties that had been performed by claimants named herein on the first, second, third and rest day relief positions of the Telegrapher-Levermen at "GF" Tower, Oakdale, Tennessee.

In consequence of this improper arbitrary action on the part of the Carrier, the Carrier shall now be required to compensate claimants D. E. Jeffers, L. E. Eastham, G. L. Ooten, J. T. Litton, F. C. Harper, and H. C. Miller, who occupied the position of first trick, second trick, third trick, rest day relief positions of Telegrapher-Levermen, "GF" Tower, Oakdale, Tennessee, respectfully, prior to abolishment of the positions Saturday, November 18, 1961, for loss of all wages, plus travel time and any other expenses incurred, subsequent to Saturday, November 18, 1961. Further it shall compensate all other Telegraphers holding seniority under the Telegrapher's Agreement on the C.N.O. & T.P. Railway who have been adversely effected as a result of the arbitrary action of the Carrier in abolishing the positions of Telegrapher-

Levermen, "GF" Tower, Oakdale, Tennessee, Saturday, November 18, 1961, for loss of all wages, plus travel time and any other expenses incurred, subsequent to Saturday, November 18, 1961, And further that the Carrier shall restore the positions of first trick, second trick, third trick and rest day relief positions of Telegrapher-Levermen, "GF" Tower, Oakdale, Tennessee, as they were prior to Saturday, November 18, 1961, and that claimants be restored to position held at "GF" Tower, Oakdale, Tennessee prior to Saturday, November 18, 1961.

EMPLOYEES' STATEMENT OF FACTS: "GF" Tower is located on the section of the Cincinnati, New Orleans & Texas Pacific Railway between Danville, Kentucky, and Oakdale, Tennessee. The time table mileage is measured from Cincinnati and shows Danville 116.6 miles from Cincinnati, while "GF" Tower is 253.4 miles, and Oakdale is 254.4 miles from Cincinnati. Harriman Junction is located 258.3 miles from Cincinnati, and belong Oakdale.

Prior to November 18, 1961, there was a first, second and third shift position of telegrapher-leverman at "GF" Tower, Oakdale, Tennessee. The Carrier declared abolished the positions at "GF" Tower, effective Saturday, November 18, 1961.

ORT Exhibits 1 through 9, attached hereto, are copies of correspondence exchanged in the handling of the claim on the property. As shown in ORT Exhibit 1, after the Carrier declared the positions abolished, it required or permitted other than telegraphers to perform the work that has by history, tradition, custom, and agreement been assigned to telegraphers at "GF" Tower. Some of the work was even transferred to telegraphers at a different location on another seniority district.

In ORT Exhibit 4 it was pointed out that the Carrier placed in effect new special instructions when the positions at "GF" Tower were declared abolished that provided the work of registering trains should be performed at the Yard Office at Oakdale in place of having telegraphers at "GF" Tower handle this work. Furthermore, Employees have given concrete information of consists, communications, and reports affecting train movements that have been transmitted since the "GF" Tower was declared abolished, by other than telegraphers.

Claim was made in behalf of the employees who held the positions of first, second and third shift telegrapher-leverman at "GF" Tower at the time the Carrier declared the positions abolished, November 18, 1961, and who have been deprived of the work being performed at that location.

The claim was appealed to the highest officer designated by Carrier, and declined by him.

CARRIER'S STATEMENT OF FACTS: Oakdale, Tenn., is located 84 miles north of Chattanooga, Tenn., on the CNO&TP Railway, which extends from Chattanooga 338 miles north to Cincinnati, Ohio. Train operations over the CNO&TP are controlled by CTC (Centralized Traffic Control) from the Dispatchers' Office at Somerset, Ky., the division headquarters point.

Prior to November 1961, carrier maintained a continuous train order office at Oakdale known as "GF" Tower, which was also a remote control and interlocking plant (although CTC was in operation on both sides of Oakdale,

(Exhibits not reproduced).

OPINION OF BOARD: Prior to November, 1961, Carrier maintained a continuous train order office at Oakdale, Tennessee, known as "GF" Tower, which was in the yard office located about one mile north of the combination freight and passenger station. It was also a remote control and interlocking plant. Three regular and two relief telegraphers were assigned and manned the tower. Oakdale is 84 miles north of Chattanooga, Tennessee on the Carrier's railroad which extended from Chattanooga, Tennessee north to Cincinnati, Ohio, a distance of 338 miles.

In the month of November, 1961, the Carrier completed an electric centralized traffic control installation on its railroad, known as a "CTC" machine. Prior to November, 1961, a CTC was in operation on both sides of Oakdale but had not been extended through the Oakdale area.

On November 16, 1961, the Division Superintendent of the Carrier, issued Bulletin No. 49, which was posted at Oakdale, advising that effective November 18, 1961, train order office at "GF" Tower, Oakdale, Tennessee would be discontinued. On the same day, i.e. November 16, 1961, the Chief Dispatcher issued a message that on and after November 18, 1961, all positions of telegrapher-leverman at the tower were abolished. Thereafter the work performed at "GF" Tower was controlled by the CTC machine located at Somerset, Kentucky.

After the closing of "GF" Tower and the abolishment of the positions at that point, the employees of the Carrier who had manned the tower had themselves placed in other positions in the Carrier's system in accordance with the provisions of Rule 27 of the Agreement between the parties.

The Organization contends that the closing of the tower and the abolishing of the positions was an "arbitrary action" on the part of the Carrier and further that after the closing of the tower and abolishing of the positions, the Carrier, had, in violation of its agreement, permitted employees not covered by the Telegraphers' Agreement to perform the duties that had previously been performed by the Claimants named, prior to the closing of the tower and the abolishment of the positions. The Organization further contends that this work belongs solely and exclusively to telegraphers under the Agreement and relies on Rule 1, the Scope Rule of the Agreement, which reads as follows:

"Rule 1—Scope

(a) This agreement applies to all telegraphers, telegrapher-clerks, telephone operators (except telephone switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, block operators and staffmen, operators of mechanical telegraph machines, wire chiefs, assistant wire chiefs, or analogous positions hereafter established; also such station agents and assistant station agents and ticket agents as are listed herein.

(b) The word 'employee' as used in these rules will apply to all the foregoing classes, and employees will be classified according to duties performed."

It is evident from a reading of the foregoing Scope Rule, that it is of the general type. It does not define or describe work, but only lists by title

the classes of employees covered by the terms and provisions of the Agreement. Certainly the work incident to the operation of a CTC installation is not specifically mentioned.

A CTC system has been defined as follows:

"A term applied to a system of railway operation by means of which the movement of trains over routes and through blocks on a designated section of track or tracks is directed by signals controlled from a designated point, superseding time-table superiority of trains, and without requiring the use of train orders."

See Award 4452 — Carter.

This Board has consistently, in interpreting such general type rules, applied the principle of determining whether or not the work in dispute has been performed solely and exclusively by Claimants through practice, custom and tradition. We have also held on any number of occasions that the burden of proving such sole and exclusive right, through practice, custom and tradition, is on the Organization by requiring it to submit competent supporting evidence to establish any violation of the Agreement. See Awards 14033, 13612, 13741, 13378, 12685.

In the dispute before us it is incumbent on the Organization to prove that (1) the actions of the Carrier was arbitrary and (2) that the work involved " * * * had been performed traditionally and by agreement with the Carrier by means of the telegraphers assigned at that location and that the Carrier could not declare the positions abolished and thereafter require other than telegraphers to perform this work."

The Organization, in support of its position and contention that the work involved has been customarily and traditionally performed by Claimants and must now be performed by employees covered by the Agreement between the parties, submits what purports to be copies of communications to and from various personnel of Carriers Exhibits (1-4). The Carrier contends that the messages were to and from its supervisory and administrative personnel seeking information and the giving of instructions and further contends that the messages refer to work, which by tradition, custom and practice does not belong solely and exclusively to the employees under the Agreement.

The Carrier in support of its position submits certain statements, called Exhibits "B", "C", "D", "E", "F", "G", "H", "I", "J" and "K". The Organization objects to the introduction of these exhibits on the ground that they were not considered on the property.

This Board has, under similar circumstances held that such evidence can be considered by the Board. In Award 11598 (Dolnick) we held:

"* * * We assume that the Carrier's position was no different then than as it later set out in its Ex Parte Submission. Presumably the specific 59 affidavits were not discussed. But the general position of the Carrier with respect to the application of the Scope Rule and the historical and customary practice was, unquestionably, discussed. These affidavits merely support Carrier's position. * * * Under similar circumstances, we have held that such evidence attached to the original submission can be considered by the Board."

In the letter to the Organization, dated August 19, 1963, wherein copies of the exhibits were enclosed, it was stated "These statements are submitted in support of the position Carrier has taken throughout the handling of this claim on the property, and will be used in Carrier's submission to the Third Division, National Railroad Adjustment Board."

It is therefore evident that the Carrier submits these exhibits merely for the purpose of supporting its position. Accordingly, we hold that these exhibits can be considered by the Board.

We have examined the various exhibits and conclude from such examination that they do not constitute persuasive evidence that work which had been customarily, traditionally and exclusively reserved to telegraphers had been shifted to others.

The parties are in disagreement with reference to the controlling question as to whether or not the disputed work had been exclusively assigned, by custom or tradition, to the telegrapher employees. There is no competent evidence in the record for resolving these opposing contentions of fact.

There is no evidence in the record to show that the actions of the Carrier in this dispute was arbitrary.

The Organization has failed to meet its burden of proving exclusive rights to the performance of this work by tradition, custom and practice, which it is required and must do when a claim, such as the one before us, is made under the general type Scope Rule which is contained in the Agreement between the parties. Accordingly, the claims must be denied.

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.

A W A R D

The claims are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1966.

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