

Award No. 14384
Docket No. CL-15251

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5685) that:

(1) Carrier is in violation of the rules of the current Clerks' Agreement by permitting or requiring teletype and telegraph operators in the joint CB&Q-C&S Telegraph Office at Denver, Colorado, to operate IBM Machines.

(2) Carrier shall now be required to return the work in question to the Scope of the Clerks' Agreement and to the employees subject to the Agreement entitled to perform same.

EMPLOYEES' STATEMENT OF FACTS: Starting in 1936, the Colorado and Southern Railway Company began installing International Business Machines in their Auditing Department in Denver, Colorado. This IBM equipment included Key Punch machines, Collaters, Sorters, Tabulators, Computers and Reproducers.

From the date of the original installation of these machines in 1936, until about October 15, 1963, employees covered by the Clerks' Agreement were used to operate all of these machines.

Attached as Employees' Exhibits Nos. 1 and 2 are copies of bulletins advertising positions of Key Punch Operators.

On or about October 15, 1963, Carrier installed an IBM 047 machine in a room adjacent to the joint CB&Q-C&S Telegraph Office in Denver, Colorado and shortly thereafter an 063 machine was installed in this same office and telegraphers were assigned to operate them.

The 047 can be described as a machine activated by electrical impulse from a series of codes on a punched tape. When the tape is fed into the machine, it automatically punches cards to correspond with the information on the tape. In addition, the 047 also has an alphabetical keyboard similar to a typewriter keyboard, enabling the operator to transfer information to a punched card by manipulating the keys.

This proposal is disposed of with the understanding that present rules and practices are undisturbed."

In the bulletining of the position in question to bids from telegraph service employes and in the assignment thereto of a telegraph service employe, present rules and long-existing practices were not, in the least, disturbed. The procedure was exactly as it has always been in the creation of positions to operate any machine in "GN" telegraph office at Denver, Colorado.

Under date of December 12, 1963, General Chairman John H. Moberly of the Clerks' Organization wrote Superintendent E. C. Ackerman and filed the protest which has now been progressed to your Division of the Adjustment Board. (See Carrier's Exhibit A.)

Under date of December 18, 1963, the Division Chairman of The Order of Railroad Telegraphers, Mr. Carlos Chacon, wrote Superintendent E. C. Ackerman with respect to this IBM machine operation (Carrier's Exhibit B) and therein specifically stated:

"These duties belong to C&S Telegraphers GN office as per Scope Rule, Rule 1, Current Agreement."

Under date of December 20, 1963, Superintendent E. C. Ackerman properly replied to Clerks' General Chairman John H. Moberly and therein stated that since it is quite clear that the Carrier is not in violation of any rules of the current Clerks' Agreement, as alleged, the request for a change in the arrangement is "respectfully declined" (See Carrier's Exhibit C).

Under date of February 17, 1964, in his file "Clerks' Case No. 307," General Chairman Moberly appealed the Superintendent's declination to Mr. R. D. Wolfe, Assistant to Vice President, The Colorado and Southern Railway Company (Carrier's Exhibit D).

Under date of April 3, 1964, Mr. R. D. Wolfe properly replied to General Chairman Moberly and, in addition to affirming the position of and declination made by Superintendent Ackerman, also directed the General Chairman's attention to the fact that the duties made subject of dispute were "... never, at any time, encompassed within the scope of the Clerks' Agreement in effect on this property." (See Carrier's Exhibit E.)

(Exhibits not reproduced.)

OPINION OF BOARD: On October 15, 1963, Carrier placed into use in a room adjacent to the "GN" telegraph office in Denver, Colorado, an IBM 047 machine and shortly afterwards an IBM 063 machine. The 047 automatically punches cards from a punched tape. It also permits an operator to transfer information to cards from a keyboard. The 063 produces tape punched automatically from cards fed through the machine.

On January 10, 1964, Carrier established a temporary position of telegrapher to operate these machines. On May 4, 1964, the position was made permanent.

The Organization claims the exclusive right to operate these machines and bases its claim on Rule 1, (Scope and Work of Employes' Affected). Rule 2 (Definition of Clerk). Rule 3 (Seniority) and Rule 4 (Promotion).

Rule 1 reads, in pertinent part, as follows:

"(a) These rules shall govern the hours of service and working conditions of all employees engaged in the work of the craft or class of clerical, office, station and storehouse employees, subject to exceptions noted below. Positions or work coming within the scope of this Agreement belongs to the employees covered thereby, except that clerical, office station or storehouse work may be performed by officers or employees not covered by this Agreement which is incident to their regular duties.

(b) Whenever any mechanical device . . . is utilized for the accomplishment of work of the character performed by employees subject to the Scope of this Agreement, such mechanical devices shall be operated by employees covered by said Agreement." (Emphasis ours.)

Rule 2 reads, in pertinent part, as follows:

"DEFINITION OF CLERK

(a) Employees who regularly devote not less than four hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports and statements, handling of correspondence, and similar work and to the operation of . . . key punch, teletype (except teletypes used exclusively in the transmission of messages and reports of record and located in offices which are equipped with telegraph facilities) and all other similar equipment or devices used in the performance of clerical work or in lieu of clerical work, shall be known as clerks." (Emphasis ours.)

The parties have long been in dispute over whether or not these Rules are general in nature, requiring a resort to history, custom and practice to determine whether there was an intention to grant exclusive rights thereby. In 1954, Carrier proposed a new rule:

"Establish a rule or amend existing rules to recognize the Carrier's rights to assign clerical duties to telegraph service employees and to assign communication duties to clerical employees."

This proposal was dealt with in the Chicago Agreement of August 21, 1954, as follows:

"This proposal is disposed of with the understanding that present rules and practices are undisturbed."

Both sides invoke this disposition. The Organization asserts that ever since IBM machines were first installed by Carrier, the work of operating them has always been performed by employees covered by the Clerks' Agreement; and that, by assigning the operation of these machines to telegraphers, the Carrier disturbed present rules and practices.

Carrier, on the other hand, relies on the Scope Rule of the Telegraphers' Agreement which by exempting machines not located in telegraph offices implies that if they are in a telegraph office, they are within the scope of the Telegraphers' Agreement. It also relies on the 1954 Agreement, in that the present rules and practices were not disturbed. It argued that the duties assigned in

the operating of these machines were never before performed on the property and could not, therefore, be held to violate present practice.

The Telegraphers were invited to participate in the resolution of the dispute but declined. What the Organization proved, by its resort to history, custom and practice, was that its members had always operated these machines. The Clerks' Scope Rule, however, applies not merely to the operation of machines but to machines which are "utilized for the accomplishment of work of the character performed by employees subject to the Scope of this Agreement . . ." (Emphasis ours.) Thus, it was incumbent on the Clerks to prove that they had always operated these machines for the accomplishment of work they had always performed.

The Organization attempted to meet this requirement by asserting that the work of the 047 and 063 is to punch tape or cards, which has always been done by Clerks. We think this assertion does not meet the requirements as to the kind of work to be done. The tapes or cards bear the same relation to these machines as a letter bears to a typewriter. What should be shown is that the machines were used to punch cars or tape for work previously done by clerks.

The work done by these machines consists of making cards or tapes out of information relating to interchange reports, train consists and other reports transmitted to the telegraph office by wire or mail. The information transmitted to the telegraph office is the same as it had always handled. The change seems to be that tape received on the teletype is now fed into the 047 and automatically punched on cards; and cards which are received for transmission are changed into tape on the 063 for use on the teletype, or to double check on the 047 output.

Some of this work is performed automatically, teletype tape, for example, being fed directly into the 047. It is difficult to see how work now performed automatically by a machine can be said to be work customarily performed by Clerks.

The Organization argues that the Telegraphers' Agreement does not place an obligation on the Carrier to give the work to telegraphers. It denied Carrier's assertion that machines located in telegraph offices are subject to manning by employees represented by the Telegraphers' Organization. It pointed out that these machines were not installed in the telegraph office but in an alcove created by partitioning off a portion of the adjoining Conductor's room. It also pointed out that these machines do not transmit or receive messages and are not connected with telegraph wires.

Even if these arguments were valid they would prove only that the telegraphers were not entitled to the work but it would not prove that the Clerks were. The fact that telegraphers are not entitled does not per se mean that the Clerks are. The Clerks still have the obligation to prove that they are entitled to the work either by the Agreement or by history, custom and practice. This the Organization has failed to do.

The Organization also based its claim on a Memorandum of Agreement signed on October 1, 1963, which governed the procedure and the transfer of work involved in the "proposed installation of IBM machines 047, 063 and 1440 at Denver, Colorado," and which contains no reservation or exception indicating that anyone but Clerks were affected.

It does not appear that this Agreement enlarged the scope of the Clerk's jurisdiction but was designed to provide for the orderly transfer of work done by Clerks from one seniority district to another. Under this Agreement the Clerks would still be obliged to show that it was their work and that it was being transferred away from them.

We must conclude, therefore, that the Claimant has failed to sustain its burden of proof that it had the exclusive right to perform the work in question.

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 5th day of May 1966.

LABOR MEMBER'S DISSENT TO AWARD 14384 (DOCKET CL-15251)

The Referee rendered an erroneous decision. In the "Opinion of Board" he states:

"The Organization also based its claim on a Memorandum of Agreement signed on October 1, 1963, which governed the procedure and the transfer of work involved in the 'proposed installation of IBM machines 047, 063 and 1440 at Denver, Colorado,' and which contains no reservation or exception indicating that anyone but Clerks were affected.

It does not appear that this Agreement enlarged the scope of the Clerks' jurisdiction but was designed to provide for the orderly transfer of work done by Clerks from one seniority district to another. Under this Agreement the Clerks would still be obliged to show that it was their work and that it was being transferred away from them."

The pertinent rules involved in this dispute are Rule 1, Scope, and the Memorandum of Agreement bearing an effective date of October 1, 1963. The Scope rule reads in part as follows:

"* * * Positions or work coming within the scope of this Agreement belongs to the employees covered thereby, except that clerical, office, station or storehouse work may be performed by officers or employees not covered by this Agreement which is incident to their regular duties."

Therefore, it is apparent that this is not a general scope rule, as the Referee infers. The employees within the scope of the Clerks' Agreement have performed the work and have been the sole operators of similar machines since such machines were on the property as far back as 1936, even though such machines were not as efficient or elaborate as these IBM machines.

On October 1, 1963, the duly authorized representatives of the Carrier and the Brotherhood entered into an agreement for the sole purpose of having clerical employees perform the operation of these machines at Denver, Colorado; and to bring work, positions and employees off the line-of-road and from different departments and seniority districts into the so-called machine room. The first paragraph of the Memorandum of Agreement spells out in unmistakable language (that is, unmistakable to everyone but the Referee) that:

"This Agreement shall be applicable only in the proposed installation of IBM machines 047, 063 and 1440 at Denver, Colorado, and the transfer of work from one or more seniority districts to another as a result of such installation."

The Referee acknowledges that this Agreement "contains no reservation or exception indicating that anyone but Clerks were affected." We could not agree more — Clerks were the only ones affected. He then goes on to say: "It does not appear that this Agreement enlarged the scope of the Clerks' jurisdiction" and we, again, agree that such is a fact — it does not enlarge — it retains — the Clerks' jurisdiction. He then continues by clearly pointing out that such Agreement:

"WAS DESIGNED TO PROVIDE FOR THE ORDERLY TRANSFER OF WORK DONE BY CLERKS FROM ONE SENIORITY DISTRICT TO ANOTHER." (Emphasis ours.)

After all the foregoing conclusions, he reaches the erroneous conclusion that:

"Clerks would still be obliged to show that it was their work" when, he himself, agrees it was "work done by Clerks." Rule 1, Scope provides that "work coming within the scope of this Agreement belongs to the employees covered thereby." That special provision renders null and void his statement that "Clerks would still be obliged to show that it was their work."

The October 1, 1963 Memorandum was made between the Carrier and the Clerks. Why? Because the Clerks' work was going to be transferred. It was to be applied "only in the proposed installation of IBM machines 047, 063 and 1440," which are the numbers of the machines involved in this dispute. The

parties did not include the machine numbers so the installers would be sure to install the right machines, or so the janitors would know which machines to dust. The parties included them in their Agreement so that Clerks whose work was transferred to those numbered machines would perform their work on those machines.

The Memorandum was to apply for any installation of the enumerated Machines "at Denver, Colorado," the exact location involved in this dispute.

What the parties signatory to the Clerks' Agreement and the Memorandum of Agreement have been told by the Referee in this Award is this: I do not agree with the plain, unambiguous language of either your Scope Rule or your Memorandum of Agreement; therefore, I have ignored their contents and, for the purposes of this dispute, have rendered your agreements completely null and void.

The Referee has far exceeded his authority. The Award has taken away from both parties their right to make agreements. With due regard to their intelligence, neither party can conscientiously condone the Referee's decision in this dispute.

For the foregoing reasons, I dissent most vigorously to this erroneous decision.

C. E. Kief
Labor Member
June 3, 1966