

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad that:

1. The Carrier has violated the agreement between the parties since October 12, 1960 when it permits or requires employes other than covered by the Telegraphers' Agreement to perform work of Operators of mechanical telegraph machines at 'KY' telegraph office Glen Park (Kansas City), Kansas.

2. The Carrier shall be required to pay the telegrapher at 'KY' Glen Park for each day on which such service is rendered by other employes the minimum rate per day for telegraphers as set forth in the agreement plus regular rate.

EMPLOYEES' STATEMENT OF FACTS: Glen Park telegraph office is located in Carrier's Kansas City, Kansas freight yard terminal. The office is manned by one telegrapher-clerk, assigned hours 8:30 A. M. to 5:30 P. M., seven days per week. In addition to telephones and Morse telegraph the office is equipped with a mechanical telegraph machine and all of such equipment is utilized by the telegrapher-clerk in performing the communication work relating to the Carrier's operations at that point. The office is closed between 5:30 P. M. and 8:30 A. M.

The current Agreement between the parties, which, by reference is hereby made a part of this submission, provides:

"RULE 1. EMPLOYEES INCLUDED

(a) These rules and working conditions will apply to Agents, Freight Agents, or Ticket Agents, Agent Telegraphers, Agent Telephoners, Relief Agents, Assistant Agents, where they have charge of station, take the place of or perform the work of an Agent, Telegrapher, Telephone Operators (except Switchboard Operators), Towermen, Levermen, Tower and Train Directors, Block Operators, Staffmen, Operators of mechanical telegraph machines, used for receiving

October 17, 1960, General Chairman W. C. Thompson filed protest with Mr. R. B. George, Superintendent, account telegrapher at North Yard, Parsons, Kansas, required to transmit freight train consists to Glen Park Yard during the time telegrapher was not on duty at Glen Park Yard office, alleging this was violation of the Telegraphers' Agreement and an alleged understanding with the Superintendent of Telegraph.

The protest was declined by Mr. R. B. George October 22, 1960, and under date of October 24, 1960, General Chairman Thompson filed claim with Superintendent George for one day under Rule 1 (d) for and one behalf of the telegrapher-clerk at Glen Park for each day that this alleged violation is permitted.

The claim for additional compensation was declined by Mr. George October 25, 1960, and neither his decision of October 22, 1960, declining the protest, nor his decision of October 25, 1960, declining the claim for additional compensation, was rejected and appealed by Mr. Thompson within sixty (60) days as provided in Article V — Carriers' Proposal No. 7, August 21, 1954, Agreement, or until December 27, 1960.

The undersigned declined the alleged protest and claim under date of February 2, 1961, both under Article V — Carriers' Proposal No. 7, August 21, 1954 Agreement, and under the Telegraphers' Agreement on the alleged merits.

Carrier's Exhibit A, attached hereto and made a part hereof, is copy of correspondence exchanged by the parties in handling this matter on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The Glen Park telegraph office, located at Carrier's Kansas City freight yard terminal, is manned by one telegrapher-clerk, assigned hours 8:30 A. M. to 5:30 P. M., seven days a week. This office is equipped with telephones, morse telegraph and a mechanical teletype machine capable of automatically transmitting and receiving messages. The teletype machine is relatively simple to function because of its automatic features. In this case, the machine was used for transmitting and receiving messages when the telegrapher was on duty. On October 12, 1960 Carrier's trainmaster issued instructions to the telegraphers at Parsons, Kansas, (from where mechanical telegraph machine circuits are extended to Glen Park) that when sending consists to Kansas City to cut in Glen Park. The purpose of this instruction was to establish night communication service during the period the telegrapher-clerk was off duty. Claimants contend that in requiring or permitting employees from other crafts not covered by the agreement to receive messages, Carrier has violated the Scope Rule (Rule 1 of the Agreement). Carrier contends that merely receiving messages from the automatic teletype machine, which involves the tearing of the message from the machine after it has been transmitted and automatically typed, does not constitute "operating" the machine, and that therefore, the Agreement has not been violated.

Carrier contends that the General Chairman filed a protest with Carrier in a letter dated October 17, 1960 which was denied October 22, 1960 and that no appeal was made to the next officer until December 27, 1960, thus violating the 60 day time limit rule of Article V, Section 1(b) of the Agreement. Based upon this contention, Carrier requests that this Claim be dismissed.

In reviewing the record, this Board finds that a letter dated October 17, 1960 was written by the General Chairman to Carrier's Superintendent in which the alleged violation was defined. This letter also included a request to cease said violation. This letter was evidently not considered as a complaint by Carrier as set out in a letter from Carrier's Vice President-Personnel to the General Chairman dated February 2, 1961 wherein the Vice President-Personnel stated: "You filed a grievance, not a claim, dated October 17, 1960 with Superintendent R. B. George, which he declined in his letter dated October 22, 1960." In view of this statement, we cannot consider the letter dated October 17, 1960 as being a claim. We find that the "claim" was filed subsequent to October 17, 1960 in the form of several letters written by the General Chairman bearing dates of October 24, 1960; November 8, 1960; and December 19, 1960. The record reveals that this claim was denied by the Superintendent on December 22, 1960 and that appeal was lodged by the General Chairman on December 27, 1960 to the Vice President-Personnel. Therefore, we find that a timely appeal was lodged and the request for dismissal based upon the time limit rule is denied.

This brings us to consideration of the merits of this dispute. We find that the "scope rule" of the agreement herein is general in nature. It does not define or describe the work. Therefore, practice, custom and tradition determines whether the work in this dispute is covered. In this case, the messages were caused to be transmitted at Parsons, Kansas by telegraphers. The mechanical teletype machine at Glen Park automatically received and typed the message on a roll of paper previously installed in the machine. As stated in Award 14384 — Wolf, "It is difficult to see how work now performed automatically by a machine can be said to be work customarily performed by clerks." (In this case, telegraphers.) There is nothing in the Scope Rule or elsewhere in the Agreement that requires the Carrier to place a member of the Telegraphers' Organization on duty for the purpose of watching an automatic machine perform work.

Award No. 45 of the Special Board of Adjustment No. 226 has passed upon the issue herein when it condoned Carrier's authorization for traffic office personnel to tear off messages from the teletype machine for delivery to addressees.

Under a similar agreement an identical issue was presented and denied in Awards 14184 and 14185 — Dolnick. The same conclusion was reached concerning the use of a telephone (Award 4063 — Carter); automatic elevator (Award 6416 — McMahon); and automatic gates (Award 9313 — Johnson and Award 9610 — Rose). As stated by Referee Carter in Award 3051, "... The installation of labor saving machines and devices cannot be construed as taking work from the scope of the agreement. . . ."

In view of the precedent set by prior awards, this Board must hold that the tearing of paper from an automatic machine does not constitute "operating" the machine. Accordingly, this Claim must be denied.

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 30th day of November 1966.