



Award No. 15162
Docket No. TE-14000

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

PENNSYLVANIA-READING SEASHORE LINES

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania-Reading Seashore Lines that the CT-449's submitted by the District Chairman in accordance with Article 32(a) are payable to the following employees:

E. A. Clark	9/16-17-21-27-28/61
A. L. Creely	9/18-19/61
F. W. Sharp	9/24/61
J. W. Wilson	9/25, 10/2/61
Oldest regular employe idle if no extra men available	9/22-23-26-29/61
F. C. Wawrzyniak	10/4/61
Oldest regular idle employe if no extra men available	10/5, 10/7-13-14-16, 10/20-23/61
W. J. Krause	10/6/61
F. C. Wawrzyniak	10/8-9/61
J. E. Engle	10/10/61
J. W. Wilson	10/11-17/61
E. A. Clark	10/12/61
F. E. Sharp	10/15-22/61
E. J. Devinney	10/18/61
R. L. Shakespeare	10/21/61
J. H. Walsh	9/30, 10/1/61
No Claimant	10/5/61

The above claimants on dates enumerated are entitled to payment in accordance with the provisions of the schedule agreement,

scope violation, and should be allowed. Violation of scope due to employees from the Movement Bureau copying messages and train reports off the teletype machine in CF Office, which work belongs to the employees covered by the Telegraphers' Agreement.

EMPLOYEES' STATEMENT OF FACTS: The parties are signatory to an agreement dated January 1, 1948, with subsequent rule amendments and rates of pay effective as of January 1, 1957 which by reference is hereby made a part of this submission. Article 1, Scope, of said Agreement specifies that:

"These rules and rates of pay shall constitute an Agreement between The Pennsylvania-Reading Seashore Lines and its

Station Agents

Assistant Agents (except Agents at Atlantic City-Freight,
Atlantic City-Passenger, Millville, Paulsboro-Clerksboro,
Penns Grove-Pedricktown Stations

Wire Chiefs

Assistant Wire Chiefs

Train Directors

Assistant Train Directors

Telegraphers

Telephone Operators (except Telephone Switchboard Operators)

Block Operators

Operator-Clerks

Levermen and

Printer Operators

represented by The Order of Railroad Telegraphers, and shall govern the hours of service and working conditions of the said employees in positions classified herein."

Article X of the Agreement provides:

"(a) Except as otherwise provided in this Agreement, an employee shall be compensated at the rate which is provided in the Rate Schedule for the particular position he works.

(b) All employees herein specified shall be paid on the hourly basis, except as may be shown in the Rate Schedule or as may be otherwise agreed to."

Prior to September 15, 1961, two positions of Wire Chief existed in CF Office at Camden, New Jersey. They were listed in the Rate Schedule of the Agreement (effective November 1, 1956) as follows:

ment. Claimant A. L. Creely on September 18 and 19, 1961, was unassigned because he had been the regular second trick Wire Chief at CF, which position was abolished on September 15, 1961, and he did not exercise seniority as third trick Block Operator at Vernon Tower until September 20, 1961. Claimant E. A. Clark was the regular Relief Wire Chief at CF. This position was abolished on September 15, 1961, and Clark exercised seniority as second trick Block Operator at Vernon Tower on September 17, 1961; therefore, on September 16, 1961, one of the dates for which claim was made on his behalf, he was an unassigned employee.

The individual claims covered by the subject at the beginning of this submission were presented by Local Chairman J. J. Leavens on CTS-449 Daily Time Reports, partly on October 4, 1961, and partly on October 24, 1961. Train Master-Road Foreman of Engines C. L. Ryan denied the claims in his letter of October 26, 1961.

Under date of November 1, 1961, the District Chairman rejected the decision of the Train Master-Road Foreman of Engines, and listed a claim in substantially the same form as that outlined at the beginning of this Submission with the Carrier's General Manager. The General Manager denied the claim on November 22, 1961. A copy of the letter of November 22, 1961, is attached as Carrier's Exhibit B.

The District Chairman rejected the General Manager's decision and turned the claim over to his General Chairman. In his letter of December 8, 1961, the General Chairman listed the claim for discussion with the General Manager. The claim was discussed on January 18, 1962, and on February 23, 1962, the General Manager denied it. A copy of the letter of February 23, 1962, is attached as Carrier's Exhibit C.

Therefore, so far as the Carrier is able to anticipate the basis of the claim, the questions to be decided by your Honorable Board are whether the Scope of the Rules Agreement was violated when the Movement Directors copied information from teletype messages in CF Telegraph Office and whether or not the Claimants are entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier maintains three shifts of Movement Directors, herein called dispatchers, at Camden, New Jersey. Inter alia, the dispatchers compile certain reports concerning operation of trains. Some of the information required is received from other points on the system via teletype machines in the telegraph office across a corridor from the dispatchers' office.

For many years the telegraph office was manned by telegraphers on the first and second shifts. When the information needed by the dispatchers was received on a teletype machine on those shifts, the telegrapher on duty delivered it to the dispatcher. No telegrapher was on duty during the third shift. During the third shift the teletype machine was permitted to operate unattended, and the third shift dispatcher would go into the telegraph office, examine the "copy" and extract the information he needed for his reports.

On or about September 15, 1961, the second shift telegrapher's position was abolished, after which the dispatcher on that shift obtained his information as did the dispatcher on the third shift.

It is uncontroverted that the communication here involved had been historically performed by telegraphers on the first and second shifts, but not on the third shift. From this Petitioner argues that the historical practice vested the work on the second shift in telegraphers; and, the change in the practice brought about by eliminating the second shift telegrapher position violated the Scope Rule of the Telegraphers' Agreement. Petitioner cites our Awards No. 5431 and 8133 in support of its contention.

The Scope Rule of the Agreement is general in nature. When this is so, we have held in a preponderance of cases that an organization must prove its claim to the work by proving its exclusive performance within the area encompassed by the Agreement through custom, practice and tradition; and, we adhered to this test in our recent Award No. 13723, involving the parties herein and similar facts and like issue. The "exclusivity" factor in the test is a harsh burden of proof. The Referee would propose striking it if the factor was not imbedded for so long a time in this Division's case law, and relief potentially available to the organizations through the collective bargaining process.

Since Petitioner has failed to satisfy the burden of proof prescribed in the test, we will deny the Claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1967.