

Award No. 16792
Docket No. TE-15348

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

Carrier violated the provisions of the Telegraphers' Agreement when, effective 3:30 P. M., Friday, April 5, 1963, it abolished the first, second and third trick telegrapher-levermen positions Montview, Virginia, and by abolishing these three positions it caused the rest day relief position telegrapher-leverman, Montview, Virginia, to be abolished. This action by the Carrier when it was known that the communication work required to be performed by employes assigned to these positions since time immemorial and claimants 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 employes not covered by the Telegraphers' 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, Montview, Virginia.

In consequence of this improper action on the part of the Carrier, the Carrier shall be required to compensate Claimant Kenneth Hopkins, occupant first trick telegrapher-leverman position, Montview, Virginia, prior to abolishment on Friday, April 5, 1963, Claimant S. N. Jordan, occupant second trick telegrapher-leverman position, Montview, Virginia, prior to abolishment on Friday, April 5, 1963, Claimant G. H. Gregory, occupant third trick telegrapher-leverman position, Montview, Virginia, prior to abolishment Friday, April 5, 1963, and Claimant M. N. Haymore, who occupied the position of rest day relief telegrapher-leverman, Montview, Virginia, L. E. Whitley, who as a result of abolishment of the positions Montview, Virginia, was displaced from position of agent, Evington, Virginia, M. C. Grizzle, who as a result of the abolishment of the positions Montview, Virginia was displaced from regular assignment rest day relief posi-

tion Danville, Virginia, for loss of all wages, plus travel time and any other expenses incurred subsequent to Friday, April 5, 1963. Further, it shall compensate all other telegraphers holding seniority under the Telegraphers' Agreement on the Danville Division of the Carrier who have been adversely affected as a result of the action of the Carrier in abolishing the positions of telegrapher-levermen, Montview, Virginia, Friday, April 5, 1963, for loss of all wages, plus travel time and any other expenses incurred subsequent to April 5, 1963. Further, that the Carrier shall restore the positions of first, second, third trick and rest day relief positions of telegrapher-levermen, Montview, Virginia as they were prior to Friday, April 5, 1963.

EMPLOYEES' STATEMENT OF FACTS: The issue in this dispute is whether the Carrier could abolish the first, second and third telegrapher-levermen positions, as well as the rest day relief position, at Montview, Virginia and require other than telegraphers to handle the communication work that had been performed previously by the telegrapher employees at this location.

ORT Exhibits 1 through 9, attached hereto, are copies of the correspondence exchanged in the handling of the claim on the property. In ORT Exhibit 1, the Employees have given you specific evidence of dates and times that specific items of work were handled by other than telegraphers. The evidence at page 2 shows that train orders, yard reports, consists and other communications affecting the movement of trains were handled by clerks, yardmasters, conductors and other employees at Montview in violation of the Telegraphers' Agreement.

In justification of the violative acts, the Carrier took the position that the Interstate Commerce Commission approved the application for the discontinuance of the mechanical interlocking at Montview. The Carrier thereafter abolished the telegrapher-levermen positions although the communication work previously handled by the telegrapher-levermen continued to exist. See ORT Exhibit 2.

It is interesting to note the Superintendent in the above cited exhibit states that train orders are not messages or communications of record. This is so obviously an error that no further citation need be made with regard to this matter.

The claim was appealed to the highest officer designated to handle claims or grievances and declined by him.

Claim is now properly before your Board for final adjudication.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Montview, Virginia, is located approximately 2.1 miles south of Lynchburg, Virginia, on Carrier's main line about midway between Alexandria, Virginia, and Salisbury, North Carolina. Train operations over this portion of the railroad are controlled by CTC (Centralized Traffic Control) from the Dispatcher's office at Greensboro, North Carolina. A continuous train order office is maintained at Monroe, located 7.4 miles north of Lynchburg.

(in no case less than thirty-six hours), and will be eligible to any position on their respective division or seniority district to which their seniority and qualifications entitle them. In the exercise of a displacement right, the employe shall be required to claim a position and to place himself thereon within thirty days from the date he is cut off or displaced by a senior employe. Failing to do so, the employe shall lose his displacement right and must go to the extra board; provided in case of bona fide sickness or injury the above shall not apply and the employe shall have thirty (30) days from date of recovery to claim a position and to place himself thereon. It is understood that an employe is not 'displaced' until actually relieved."

"RULE 44.

TERMS OF AGREEMENT

This agreement supersedes and cancels all former agreements, but does not, except where rules are changed, alter former accepted and agreed to practices, working conditions or interpretations.

This agreement is revised as of September 1, 1949 and shall continue in effect until thirty (30) days' written notice is given by either party to the other of desire to revise or modify in accordance with the provisions of the Railway Labor Act."

The Chicago Agreement of August 21, 1954, contains the following provisions identified as Section 1 (a) of Article V:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

OPINION OF BOARD: This Claim was presented and argued on the property as a violation of the Agreement by the abolishment on April 5, 1963, of four Telegrapher-Leverman positions at Montview, Virginia. To support the claim the Organization argues that work belonging exclusively to the Organization and to the abolished positions continued to require performance at Montview and was after April 5th performed by persons not covered by the Agreement.

In its original claim letter, dated May 27, 1963, Organization recites a series of communications made at Montview between April 5 and May 21 by persons not covered by the Agreement, and claims that transmitting of such communications belonged to the Organization under the Agreement.

In its reply dated July 12, 1963, Carrier asserts that "All work belonging exclusively to Telegraphers at Montview was eliminated when the positions were abolished and the train order office closed," and states with regard to the

communications listed in Organization's letter: "Telephone calls such as the ones you describe on pages 2 through 4 of your letter did not begin on April 5. Conversations identical with the ones you have cited took place daily long before the Telegrapher-Leverman positions were abolished, and no claim or complaint was filed by you or the employees you represent. I advise you that no 'employees not covered by the Telegraphers' Agreement' are transmitting any communications of record nor are they performing any 'other duties exclusively to the employees you represent.'"

The record shows that thereafter the Organization did not present evidence proving that the practice was other than as claimed by Carrier; Organization merely denied that Carrier had correctly stated the facts with regard to the practice of others than Telegraphers making communications such as recited by it in its Claim letter, and re-asserted that the practice was otherwise.

The burden of proving facts essential to establish its case is the Organization's; in the face of Carrier's denial, it was up to the Organization to provide evidence that practice had in fact showed that the recited work was within the Scope of the Agreement as the exclusive property of the Organization. Organization did not supply such evidence.

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 no violation of the Agreement was proved.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 21st day of November 1968.