

Award No. 18445
Docket No. TE-18422

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Denver and Rio Grande Western Railroad, that:

1. Carrier violated and continues to violate the Agreement between the parties when, on or about October 7, 1968, it connected teletype machines or similar machines or devices operated by employees not covered by the Telegraphers' Agreement and located off the Carrier's zone of operations, to an electronic message switcher, part of the Carrier's on line communications system and thereafter allowed, required or permitted such employees by means of such machines or devices, electronic message switcher and the Carrier's on line communications system including through circuits, to transmit and receive messages between terminals, towns and/or cities in violation of the Agreement.

2. Because of the above violations the Carrier shall now compensate the senior idle telegraphers in seniority order, including the senior furloughed extra telegraphers if there are any, one day's pay at the minimum relay telegrapher rate, for each location at which such a machine or device referred to in 1. above is operated by employees not covered by the Agreement for the purpose of communicating messages between terminals, town and/or cities by the method above described, for each days on which such a machine or device is operated. Such compensation to commence not more than sixty (60) days prior to the filing of this claim and to continue for each day until the violations complained of cease.

3. Additionally, if the above described method of transmitting and receiving messages between terminals, towns and/or cities continues, the Carrier shall establish and fill at each point where such machines or devices are operated in violation of the Agreement, a position under the Telegraphers' Agreement for the purpose of operating such machines or devices.

4. The Carrier shall permit a joint check of its records to determine the number of violations and the claimants, with the amounts to be paid to each.

5. The compensation called for by Paragraph 2 above, shall carry a rate of 6% interest compounded annually until paid to the claimants.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

An Agreement between the parties effective June 1, 1946, including changes and agreed to Interpretations to date of reissue July 1, 1963 as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The claim was timely filed, progressed under the provisions of the Agreement, to the highest officer designated by the Carrier to receive appeals, including conference, and has been denied. The Employees, therefore, appeal to your Honorable Board for adjudication.

This claim arose on October 7, 1968 when Carrier installed and placed in operation in its Denver offices an electronic message switcher connected with its computer system. This system, manned by employees not covered by the Telegraphers' Agreement, took over work formerly done in "DC" telegraph office. In particular, the transmission and reception of telegraphic communications between Carrier's on-line points and off-line points. The teletype machines used by telegraphers to do this work were removed from "DC" office.

(b) ISSUE

Transmission and reception of messages defined as communications of information or direction, directed to a person or persons by the use of attended machines or devices.

(c) FACTS

Historically, on this Carrier, telegraphers have handled all inter-city and/or inter-terminal telegraphic communications by agreement, custom and practice. Employees other than telegraphers were only entitled or allowed to operate teletype machines in lieu of messenger service intra-city or intra-terminal. Messages transmitted from offices other than telegraph offices were transmitted to the telegraph office in the same city or town from whence it was transmitted inter-city or inter-terminal by telegraphers. Carrier maintains numerous off-line offices throughout the country, these offices are connected to on-line offices by leased wires or by the Carrier subscribing to mechanical telegraph service furnished by the telephone or telegraph companies.

For many years the point of transfer of these communications was Denver and Salt Lake City. For example, if a traffic representative on-line desired to transmit a message to the traffic representative in Chicago, he delivered the message to an on-line telegrapher (by messenger or teletype) who transmitted it to "DC" office in Denver, where a telegrapher in turn transmitted (relayed) it to the Chicago office. The Chicago office, when transmitting a message to an on-line office, transmitted it to "DC" office in Denver and a telegrapher in turn transmitted (relayed) it to the on-line telegraph office from which delivery was made by messenger or by teletype. Telegrams between on-line offices and off-line offices in far western cities, such as San Francisco, were relayed through the Salt Lake City telegraph office in the same manner.

your telegraphers have suffered any monetary damages because of this change.

Your position, allegations and claim remain denied.

Yours truly,

/s/ J. W. Lovett
J. W. Lovett
Director of Personnel"

(Exhibits not reproduced.)

OPINION OF BOARD: The claim pending before this Board and presented to it pursuant to notice of intent dated August 18, 1969, is not the same claim that was handled to a conclusion on the property. At the local level a claim identical to that submitted to the Board, except that it did not contain part 5 of the latter, was filed and declined by the Carrier.

Upon appeal to the Carrier's highest officer the General Chairman revised the claim in a number of ways. He added a request for interest (Part 5 of the claim), and he substantially altered the remedy claimed for the alleged violation. Then, when the claim was appealed to the Board, the original claim with Part 5 added was attempted to be reinstated. Thus it is clearly evident that the claim before this Board is broader in scope and includes many more claimants than that which was handled to a conclusion on the property.

Employees may not amend and extend the claim to additional claimants without the consent of the Carrier. Only the claim which was denied on the property by Carrier's highest appeal officer is the claim which may be presented to and considered by this Board. Award 10286, among many others. The claim, therefore, must be dismissed.

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 no jurisdiction to consider the claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1971.

Keenan Printing Co., Chicago, Ill.

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