

Award No. 19115
Docket No. TE-14018

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION
EMPLOYES**

(Formerly The Order of Railroad Telegraphers)

LEHIGH VALLEY RAILROAD COMPANY

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

1. Carrier violated the agreement between the parties hereto when at 7:00 A. M., June 22, 1961 it declared abolished the first trick, second trick and third trick seven-day positions of Telegrapher at Packerton Yard (Packerton, Pennsylvania) when in fact the work of such positions remained and was required to be performed daily thereafter on each trick by employees outside the Telegraphers' Agreement.

2. Carrier shall be required to restore the first trick, second trick and third trick telegrapher positions at Packerton Yard, Pa., to the same status as that prevailing prior to 7:00 A. M., June 22, 1961.

3. Carrier shall compensate R. Garra, T. Didyoung, M. Cherba, T. Frendt and H. Pfeiffer, employees holding regular positions at Packerton Yard Office, for all wages lost and expenses incurred, as provided in the agreement.

4. All other employees displaced as a result of violations hereinbefore set out shall be compensated for all wages lost and expenses incurred, as provided in the agreement.

5. Senior idle employee, extra in preference, shall be paid one day's pay, at the rate applicable to the Packerton telegrapher positions, for each trick (first, second and third) on each and every day beginning on June 22, 1961 at 7:00 A. M., and continuing thereafter until such violations are corrected.

6. Joint check of Carrier's records be ordered to ascertain the names and amounts due employees as set forth herein.

Other position at Packerton, not under the parties' Agreement, are shown below, with the names of occupants thereof also shown, who are the employes who have absorbed the performance of the work of telegraphers' positions which were abolished:

Title	First Trick	Second Trick	Third Trick	Relief
Lead Clerk	J. Helferty			
Clerk	R. Keiper	C. Finney	L. Connarty	V. Mengle
Yard Master	R. Auldt	L. Hall	H. Melber	W. Spohn

The correspondence hereinbefore reproduced will disclose that this dispute has been handled in accordance with the requirements of the law and rules of procedure of your Board but failed of settlement.

CARRIER'S STATEMENT OF FACTS: There is an Agreement between the parties hereto identified as "Telegraphers' Agreement" effective February 1, 1948, copy of which is on file with the Third Division, National Railroad Adjustment Board, and is hereby referred to and made a part of this dispute.

This dispute arose at Packerton Yard (Lehighon, Pa.), a point on the main line of the Lehigh Valley R.R. The dispute alleges that when the 1st, 2nd and 3rd trick, seven day positions of Telegraphers located in Packerton Yard Office were abolished June 22, 1961, there remained and was performed by other employes not coming under the scope of the Telegraphers' Agreement, items of work that the Telegraphers claim were the exclusive duties of the Telegrapher positions abolished at that point.

Carrier denies this contention of the Organization. With the abolishment of the positions in dispute, the work associated with the three positions coming under the scope of the Telegraphers' Agreement was transferred to towerman-telephoner positions, also under the scope of the Telegraphers' Agreement, at Lehighon Tower.

Lehighon Tower is also located in Packerton Yard at a point approximately 1.6 miles east of Packerton Yard Office, the point of the abolished positions. The only employes at Lehighon Tower are towermen-telephoner positions, one on 1st, one on 2nd and one on 3rd tricks, seven days per week.

With the abolishment of the telegrapher positions at Packerton Yard Office there remained at that point yardmasters, clerks and telephone and telegraph maintainer employes who perform work that has always been performed by them at this point and on this property and it is now the contention of the Organization in presenting this claim, that this work belonged to and was an exclusive part of the duties of the abolished telegrapher positions.

Carrier states emphatically that the change made was entirely proper and within the framework of the Agreement and that the claim as presented is unsupported by rule or practice, is without merit and has been denied.

OPINION OF BOARD: While this dispute was pending before this Division the Supreme Court handed down its Opinion in *T.C.E.U. v. Union Pacific*, 385 U.S. 157. It appearing, in the record made on the property, that Carrier alleged that third parties in interest were involved, the Division, in conformity with the mandates prescribed in the T.C.E.U., decision, served notices on the alleged

third parties in interest. The Railroad Yardmasters of America did not respond to the notice. The Brotherhood of Railway, Airline and Steamship Clerks responded: (1) it would not file a submission; and (2) it would not appear at the hearing of June 16, 1971, appointed in the notice. The I.B.E.W. responded that Carrier's assignment of Telephone and Telegraph wire test or patch work to its members was in compliance with Rule 2 of its agreement with Carrier.

In consideration of the record as a whole, including the agreements of the Organizations alleged by Carrier to have a third-party interest, we find that the instant claim lacks in a showing of bona fide third-party interest within the contemplation of the decision in the T.C.E.U., case. Consequently, we proceed to consider the merits of the claim by interpretation and application of Telegraphers' Agreement with Carrier.

The Scope Rule (Rule 1) of the Telegraphers' Agreement is general in nature. It is firmly established by the case law of this Division that to prevail in reliance on such a rule, Petitioner has the burden of proving that the work involved has, historically, been performed exclusively, system-wide, by telegraphers.

At Lehigh, Pennsylvania, Carrier, prior to December 16, 1959, had a yard, called Packerton Yard, composed of two segments: Eastbound and Westbound. Each segment had its own yard office. At each of the offices a yardmaster and yard clerk were employed around-the-clock. At the Eastbound yard office telegraphers were employed around-the-clock—they performed all the communication work for both segments. Some information concerning operations at the Westbound yard was handled between the two yard offices by telephone.

On December 16, 1959, the Westbound yard office was abandoned — all operations of the former two yard segments were combined and handled at the Eastbound yard office. All positions — yardmasters and clerks — at the Westbound yard segment were abolished.

On June 22, 1961, Carrier abolished all Telegraphers positions at the Eastbound yard office. The work of the positions was assigned to around-the-clock towerman — telephone positions, covered by Telegraphers' Agreement, at Lehigh Tower, which is also located in Packerton Yard.

It is admitted that prior to abandonment of the Westbound segment of Packerton Yard, on December 16, 1959, the yardmaster and clerks employed at that point conveyed messages for transmittal to the telegraphers located in the Eastbound yard by messenger or telephone; and, messages received by the telegraphers at that location addressed to the yardmaster and clerks in the Westbound segment were conveyed by the telegrapher to the addressee via telephone or messengers. Pragmatically that same procedure, historically established, was employed after June 22, 1961 — the only factual difference being that the telegraphers were located in Lehigh Tower, in Packerton Yard, instead of the yard office in that Yard.

The gist of Telegraphers' argument is that Carrier wrongfully abolished the telegrapher positions in the yard office and assigned the work of those positions to telegraphers located in the Tower.

We find: (1) Carrier, in the absence of a contractual bar — and there is none — was free to abolish telegraphers' positions provided that the work of

the positions exclusively reserved to telegraphers was assigned to employees in that craft; (2) the work of conveying messages from the yardmaster and clerks to telegraphers for transmittal was by custom and practice not the exclusive work of telegraphers; (3) Telegraphers failed to prove that work exclusively reserved to telegraphers was assigned to employees not within that craft.

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 Carrier did not violate Telegraphers' Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of April 1972.