

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 19727
Docket Number TE-19691

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(Formerly **Transportation-Communication** Division. BRAC

PARTIES TO DISPUTE: (

(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the General **Committee** of the **Transportation-**
Communication Division, BRAC, on the Chicago, Milwaukee,
St. Paul & Pacific Railroad Company, TC-5839, that:

1. Carrier violated the terms of Agreement on May 28, 1970, and continues to violate the terms of Agreement each and every day thereafter, when it changed unilaterally the terms of Agreement and by passes the telegraphers at Savanna Relay Office, Perry Relay Office, Minneapolis Relay Office, Milwaukee Relay Office, Aberdeen Relay Office, Miles City Relay Office, Butte Relay Office, **Plummer** Relay Office and Tacoma Relay Office in the transmission and reception of car data (**Carscope**) and other **communications**, and requires or permits transmission and reception of car data (Carscope) by methods and procedures other than those established by Agreement, thus depriving telegraphers of work to which they are entitled.

2. As a result of these violations, Carrier shall pay the first second and third extra relay operators attached to each of the nine Relay offices named in Part 1 of this claim, one day's pay respectively for three 8 hour shifts in each 24 hours at each of the nine Relay Offices, commencing at **8:00** A.M. May 28, 1970 and continue such payment each day thereafter that the violations are allowed to continue.

3. If there are no extra relay operators attached to one or more of the nine Relay Offices named in Part 1 of this claim, then Carrier shall pay the three regularly assigned telegraphers in **that** office or those offices who are off on their rest day or days, one day's pay respectively for **three** 8 hour shifts in each 24 hours at each of the offices where no extra relay operators are available, **commencing** at 8:00 A.M. May 28, 1970 and continue such payment each day thereafter that the violations are allowed to continue. The term "telegraphers" used in this section includes the Chief Operator, and the First and Second Asst. Chief Operators.

4. Carrier shall restore and reestablish any and all positions abolished in the nine Relay Offices named in Part 1 of this claim, since the terms of Agreement were unilaterally changed and the violative methods and procedures have been in effect.

OPINION OF BOARD: The dispute in this case (and similar companion Awards 19725 and 19726) is unique in that it is not the usual type of claim based on the removal of work from the scope of the Agreement, which is normally progressed to this Board. One need only analyze the statement of claims to ascertain that no telegrapher's work was transferred to, or performed by employees of other classes or crafts nor was it contracted out. The issue appears to arise from technological changes and differences in types of equipment used.

While the submission of the Organization as well as the correspondence on the property exhaustively set forth the history and development of the Telegrapher's Agreement, the Petitioner did not tell us what specific items of work were allegedly being performed outside the scope of the Telegrapher's Agreement, who was performing the work, or on what specific days any alleged violation took place. These facts are the essential ingredients in perfecting cases of this nature. Since the record is devoid of any probative evidence, we will dismiss this claim for lack of proof of any contract rule violation.

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 **Employee** involved in this dispute are respectively Carrier and Employee 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 Claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1973.