

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20795
Docket Number TE-6800

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((Formerly The Order of Railroad Telegraphers)

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company
((South-central District)

STATEMENT OF CLAIM: Claim of The Order of Railroad Telegraphers on the
Union Pacific Railroad, South-Central and Northwestern
Districts, that

(a) The Carrier has violated and continues to violate the agree-
ment between the parties signatory thereto, when it requires or permits em-
ployees not covered by said agreement to "handle" train orders at West End
Yard Office, Las Vegas, Nevada, and

(b) that the Carrier has violated and continues to violate the
agreement when it requires or permits other than those covered by said
agreement to operate printing and/or mechanical telegraph machines used in
the transmission or reception of messages and reports of record, and/or to
perforate tape or cards as a function in the transmission or reception of
messages and reports of record at the West End Yard Office, Las Vegas, Nevada,
and

(c) that for such violations the Carrier shall compensate the
senior idle employee or employees covered by the Telegraphers' Agreement for
the equivalent of a day's pay for each e-hour shift, both day and night,
since August 25, 1952, the date on which the new yard office at Las Vegas
was placed in service, at the telegraphers' rate applicable to that particu-
lar location.

OPINION OF BOARD:

DECISION

The claim will be denied, because it is not supported by the record.

BACKGROUND

The claim in this case, Docket TE-6800, arose in October 1952 when
the Order of Railroad Telegraphers asserted that some of the work of opera-
ting newly installed IBM equipment at Las Vegas, Nevada, belonged to employees
represented by the Telegraphers and that the Telegraphers' Agreement had been
violated by the Carrier's assignment of such work to employees represented by
the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and
Station Employees. A similar claim in Docket TE-6799, involving IBM equipment

at Salt Lake City, Utah, was handled on the property as a companion claim, but, after the claims reached the National Railroad Adjustment Board, the claims were handled separately. The claim involving the operation of the equipment at Salt Lake City was denied in Award No. 8656, rendered on January 12, 1959, on the ground that the **communications** work previously performed by Telegraphers was not being performed by other employees, but rather, was being performed by the automatic operation of the IBM equipment. In contrast, **the claim** involving the operation of the equipment at Las Vegas was sustained in Award No. 9988, rendered on July 14, 1961 on the ground that the operation of the IBM **teletype** transmitting printer and receiving printer was work **covered** by the Telegraphers' Agreement. The effect of this latter Award was to give to the Telegraphers **some** of the **IBM** work at Las Vegas then performed by the Clerks, as well as to require the Carrier to compensate the Telegraphers for the accumulated loss of work due to the preceding performance of such work by the Clerks.

The Telegraphers filed an action to enforce Award No. 9988 in the United States District Court, Denver, Colorado, which action was resisted by Carrier on the ground, inter alia, that an **indispensable** party, the Clerks, had not been joined in the action. This ground was found valid by the Court which granted the Carrier's **motion** to dismiss on "the ground of failure to join indispensable parties." The court gave the Telegraphers 30 days to file an amended complaint **making** the Clerks a party defendant to the action, and also ordered that failure to file such amended complaint would result, upon **ex parte** application of the Carrier, in the court ordering the entry of a final **judgment** of dismissal. The Order of Railroad Telegraphers v. Union Pacific Railroad Company, U. S. District Court, Denver, Colorado, 231 F. Supp. 33 (July 27, 1964).

The Telegraphers' indisposition to file an **amended** complaint resulted in a district court judgment of **dismissal** with prejudice, which judgment was appealed to the **United States Court of Appeals for the Tenth Circuit**. The Appeals Court affirmed the **District Court's** disposition of the case, noting that the record was too incomplete for the courts to make a decision due to the Clerks not having been a party to the Board proceeding which resulted in Award No. 9988. The Order of Railroad Telegraphers v. Union Pacific Railroad Company, u. s. ct. Appls., 10th Circuit, 349 F. **2d**. 408 (October 8, 1965.)

The decision of the Tenth Circuit Court of Appeals was the subject of a **grant** of certiorari by the U. S. Supreme Court which was considered in Transportation-Communication Employees Union v. Union Pacific Railroad Company, 385 U.S. 157, 87 S. Ct. 369 (1966). There the Supreme Court said

"... We granted certiorari in order to settle the doubts about whether the Adjustment Board may exercise its exclusive **jurisdiction** to settle disputes like this in a single proceeding with all disputant unions present. . . . We hold that it must."

In connection with this ruling, the **Supreme** Court gave the following specific directions for further proceedings in the action involving enforcement of Award No. 9988.

"We affirm the **judgment** of the Court of Appeals in holding that the clerks' union **should** be a party before the Board and the courts to this labor dispute **over** job **assignments** for its **mem-**bers. The cause should be r-ded to the District Court with directions to **remand** this case to the Board. The Board should be directed to give once again the clerk's union an opportunity to be heard, and, whether or not the clerk's union accepts this opportunity, to resolve this entire dispute upon consideration not only of the contract between the railroad and the telegraphers, but 'in the light of * * * (contracts) between the railroad' and any other union 'involved' in the overall dispute, and upon consideration of 'evidence as to usage, practice and custom' pertinent to all these agreements. The Board's order, based upon such thorough consideration after giving the clerks' union a chance to be heard, will then be enforceable by the courts."

PRESENT STATUS AND NATURE OF CASE

Following the **remand** directive by the U.S. **Supreme Court**, the **Third Division, NRAB**, issued a Third Party Notice to the **Clerks' Organization** on November 16, 1971. Thereafter, under date of **November 26, 1971**, the Clerks filed with this Board a Submission opposing the Telegrapher claim involved in Award No. 9988 (**record** page **354A**, Docket TE-6800); and on **December 18, 1974** the Clerks participated with the Telegraphers and the Carrier in oral **argument** on the **claim** before the Third Division with the herein Referee participating as Neutral Member of the Board. Thus the dispute now before this Board **conforms** with the directive of the U.S. Supreme Court in **Transportation-Communication Employees Union** that the Clerks once again be given an opportunity to be heard on the Telegraphers' claim against the Carrier.

The statement of claim, consisting of parts (a), (b), and (c), now before the Board is the identical claim considered by the Board in 1961 in Award No. 9988. **However**, during the December 18, 1974 oral **argument** on the claim, all parties agreed that part (a) of the claim is not involved in this proceeding because such part **was** finally adjudicated by Award **No. 9988** and was not brought into question by the subsequent court litigation on that Award. Accordingly, the statement of claim to be considered in this proceeding, **consisting** of parts (b) and (c) of the original claim, is as follows:

"(b) that the Carrier has violated and continues to violate the agreement when it requires or permits other than those covered by said agreement to operate printing and/or mechanical telegraph machines used in the transmission or reception of messages and **reports** of record, and/or to perforate tape or cards as a function in the transmission or reception of messages and reports of record at the West End Yard Office, Las Vegas, Nevada, and

(c) that for such violations the Carrier shall compensate the senior idle **employee** or **employees** covered by the Telegraphers' Agreement for the equivalent of a day's pay for each **8-hour** shift, both day and night, since August 25, 1952, the date on which the new yard office at Las Vegas was placed in service, at the telegraphers' rate applicable to that particular location."

The Telegraphers and the **Clarks** have merged into the **same Organization** subsequent to the filing of the original claim, but this does not have any **significance** in the resolution of the claim.

ABSTRACT OF DOCKET TE-6800

More than twenty-two (**22**) years have passed since the submission to this Board of the Telegraphers' May 5, 1953 Notice of Intention to file an Ex **Parte Submission** on the claim in Docket TE-6800. The record in this case now consists of 391 pages, not **counting** the previously mentioned opinions of the U.S. District Court, the Tenth Circuit Court of Appeals, and the U. S. supreme **Court**. The record in Docket No. 6799, consisting of 304 pages, has also been made a part of the consideration of the **claim** in Docket TB-6800.

The pertinent docket entries in this case are as **follows**:

October 20, 1952: Telegraphers presented on the property the **claim** embraced by parts (b) and (c) of the instant claim. Letter of General Chairman **A.8. Herrera** to Assistant to Vice President F. C. Wood. (**Record** page (Rp.) 43.)

November 6, 1952: **Discussion** of the **claim** in conference on the property. (**Rp. 48.**)

November 10, 1952: Carrier **made** final denial of **claim** on the **property**. Letter of Assistant to Vice President F. C. Wood to General Chairman A. S. **Herrera**. (**Rp. 114.**)

November 2.1. 1952: Telegraphers' notice to Carrier that denial decision was not satisfactory and that claim would be further progressed under the Railway Labor Act. (Rp. 114.)

May 5, 1953: Telegraphers' Notice to Third **Division, NRAB**, of Intention to file an Ex Parte Submission. (Rp. 1.)

May 29. 1953: Date of Telegrapher's' **Ex** Parte Submission. (Rp. 3,)

October 5. 1953: Date of Carrier's Ex Parte Submission. (Rp. 69.)

May 3, 1956: Date of Telegraphers' reply to Carrier Submission dated October 5, 1953. (Rp. 125.)

June 6. 1956: Hearing on TE-6800 before Third Division, NBAB (Rp. 177.)

June 6. 1956: Date of Carrier's Second Submission and Answer to the Organizations **Ex** Parte Submission. (Rp. 135.)

July 25. 1956: Date of Employees' Answer to the Second Submission of the Carrier dated June 6, 1956. (Rp. 178.)

August 6. 1956: Date of Carrier's Third Submission and Carrier's Reply to Organizations Statement at Hearing. (Rp. 188.)

January 15, 1957: Carrier's Fourth Submission and Carrier's **Reply** to Organization's Third Submission dated July 25, 1956. (Rp. 210.)

April 11, 1961: **Hearing** on Docket TE-6800 before Third Division, **NRAB**. (Rp. 235.)

July 14. 1961: **Award** No. 9988 adopted by Third Division, **NRAB**, Chicago, Illinois to resolve claim in Docket TE-6800, Referee **Thomas** c. Begley, serving as Neutral Member of Board. (Rp. 254.)

July 27. 1964: Order of U.S. District Court, Denver, Colorado, dismissing telegraphers' action to enforce Award No. 9988. Order of Railroad Telegraphers' Union v. Union Pacific Railroad Company, 231 F.Supp. 33.

October 8. 1965: Decision of the U.S. Court of Appeals, Tenth Circuit, affirming District Court Order of July 27, 1974. Order of Railroad Telegraphers v. Union Pacific Railroad Company, 349 F. 2d 408.

December 5, 1966: Decision of U.S. **Supreme** Court affirming Court of Appeals decision of October 8, 1965, and remanding Telegraphers' enforcement action to District Court with directions to **remand** to the **NRAB. Transportation-Communication Employees Union v. Union Pacific Railroad Company**, 385 U.S. 1032, 87 S. Ct. 737.

November 16, 1971: **Third** Party Notice issued to the Brotherhood of **Railway, Airline & Steamship Clerks** by Third Division, **NRAB. (Rp. 350.)**

November 26, 1971: Date of Submission by Clerk's Organization. **(Rp. 354A.)**

January 5, 1972: **Hearing on** Docket TE-6800 before Third Division, **NRAB. (Rp. 355.)**

January 27, 1972: Date of Telegraphers' Submission in **response** to Clerks' **Submission** dated November 26, 1971. **(Rp. 357.)**

February 23, 1972: Date of Carrier's Response to Submission filed by the Clerks' Organization. **(Rp. 359.)**

December 18, 1974: Hearing **on** Docket TB-6800 before the Third Division, **NBAB**, with the **herein Referee**, Red Blackwell, serving as Neutral **Member** of Board. **(Rp. 388.)** Appearances: For Telegraphers, **Mr. D. A. Bobo**, International Vice **President**. For Clerks, Messrs. Paul J. **Meir**, General Chairman - Lines West and W. E. **Grandlund**, General Chairman - Lines East. For Carrier, Messrs. **Aldon Lott**, Director Labor **Relations** - South Central District and H. **Lustgarten, Jr.**, Assistant General Solicitor.

STATEMENT OF FACTS

Prior to October 1952, a variety of reports and records involved in the Carrier's operations of its freight yard at Las Vegas, Nevada, were prepared and handled by clerical employees. When such reports and records were required to be transmitted to another point on the Carrier's **line**, the **transmittal** or **communication** work arising therefrom was performed by **Telegrapher** employees. Thus, the preparation of reports and records by compiling, **writing**, typing, etc., was **work** performed by clerks and the **communication** of **same** between points by telegraph, teletype, or telephone, was work **performed** by telegraphers.

In or about October 1952, the Carrier installed in its West-End Yard Office, Las Vegas, Nevada, a **complex** of **IBM** equipment for the purpose of **automating** a substantial portion of the manual work involved in the preparation of records and the **communication** of records. This **equipment**, at one stage of the preparation and **communication** process, has the capacity to print a copy of desired information for local in-office use while concurrently transmitting

the **same** information to a distant point where another IBM machine prints a copy of the information for use there. The converse of this capacity also obtains, in that a receiving machine at Las Vegas can produce a print-out of information which **originates** at a distant point for use there and for transmittal to Las Vegas. Because of the equipment's capacity to transmit and receive information in this **manner**, the Telegraphers say that their Scope **Rule** was violated when the Carrier assigned **clerical** employees to operate the transmitting and receiving units of the equipment.

The equipment in question consists of seven different types of machines, if the teletype receiving printer and teletype transmitter are considered as the same type of machine. The **number** of each type of machine used at Las Vegas, and the descriptive name of each type, is as follows:

- (1) One IBM Alphabetical **Key** Punch Machine
- (2) Two IBM Tape Controlled Card Punch Machines
- (3) Two IBM Card Controlled Tape Machines
- (4) One **IBM** Sorter Machine
- (5) One Alphabetical Accounting Machine
- (6) One IBM Alphabetical Interpreter
- (7) **Two** Teletype Receiving Printers and One Teletype Transmitter

The operations and functions of this equipment are not in dispute, for the parties agreed **in** the December 18, 1974 hearing to take as accurate the factual description of such operations which is set out at pages 26-28 of Award No. 9988. With the exception of the alphabetization used for **convenience** to designate the paragraphs in item 7 hereinafter, that description as found verbatim in **Award** No. 9988 now follows.

(1) ONE **IBM ALPHABETICAL KEY PUNCH MACHINE**

These machines punch holes in **a** card to correspond with information to be used by associated equipment to **achieve** various results in subsequent operations.

The **holes** are cut by the machine manually, by an operator wing a keyboard similar to a **typewriter** keyboard.

The work performed by the key punch operator is the same as the work performed **by** a typist, except that where the typist produces the information on a typewritten page, the key punch operator transfers the information to a punched card.

The operation of the alphabetical key punch is a manual operation; that is to say, the result achieved by the machine, i.e., a punched card, occurs as a result of manipulation of the device by human hands.

(2) TWO IBM TAPE CONTROLLED CARD PUNCH MACHINES

This machine produces the **same result** as the alphabetical key punch, i.e. a punched card containing certain information.

The machine is activated by electrical impulse from a series of codes **on a punched** tape. When the tape is fed into the machine it automatically **punches cards** to **correspond** with the information **on** the tape.

The tape controlled card punch machine differs **from** the alphabetical key punch in the **respect** that its operation is completely automatic.

(3) TWO IBM CARD CONTROLLED TAPE MACHINES

This machine **using** punch cards punches the tape referred to **in** (2) **above**.

The punched cards are placed in the machine and the switch **turned on**. The cards then feed automatically through the machine, producing the punched tape.

The machine **is** completely automatic -- the result which it achieves requires no **human** activation; it occurs entirely as a result of electrical impulse induced by holes in the punched cards.

(4) ONE IBM SORTER MACHINE

The function of this machine is to segregate the punched cards into different classifications so that the **information** desired may be secured by inserting **the cards** in any particular **classification** into **some** other machine.

The sorting technique **is** automatic. It makes possible the **immediate** grouping and listing of cars by railroad, by type, by series, etc.

(5) ONE ALPHABETICAL ACCOUNTING MACHINE

This machine, in the **same** manner as the **others**, **is** completely automatic and is activated by punched cards. When the punched cards feed through the machine, the information represented by the holes punched in the cards is printed on a form.

The machine is used primarily for compiling the wheel **re-**port, **formerly typewritten**; although by changing the panel, switch lists, lists of certain types of cars handled or any special report required by the company covering car **handling** may be secured.

(6) ONE IBM ALPHABETICAL INTERPRETER

Since it **would** be impractical for the **employees** engaged in the car handling processes to interpret the information on the cards merely from the holes punched, the cards are fed through the "interpreter." The result is the printing across the top of the cards of the information represented by the holes **in** the cards.

This machine is automatic **in** operation.

(7) TELETYPE MACHINES

(a) This auxiliary equipment functions completely automatically in conjunction with the car handling system. For the receipt and distribution of information used in the car record processes, two teletype receiving printers and one teletype transmitter have been installed adjacent to the Car Record Bureau. Attached to the receiving printers are two teletype reperforators.

(b) The teletype receiving printer **is** activated by electrical impulse imposed automatically at some distant point. At the receiving **point** it produces information on a printed page. Using the **same** impulses, and simultaneously to the printing of the information on paper, the reperforator punches a tape on which **information** corresponding to that **shown** on the printed page is reproduced.

(c) The tape produced by the reperforator is then used to produce punched cards by the process described in **Item** (2) above.

(d) The teletype transmitters operate in the **same** manner: The tape produced electrically **from** cards by the process described in **Item** (3) is inserted in the teletype transmitter. Electrical impulses **imposed** by the code **on** the tape activate the teletype **transmitter**. The machine produces a printed copy of the information contained on the tape and at the **same** time reproduces the **same information** on a receiver at some distant point.

(e) A reperforator at the distant point of reception duplicates the information on **a** tape and the entire procedure **is** repeated.

POSITION OF THE PARTIES

The Telegraphers Scope **Rule** refers to the positions of "teletype operators" and "printer operators," and **even** though the Rule does not invest the Telegraphers with the exclusive right to perform the work of such positions, the Telegraphers' Organization states that "by virtue of history, practice and contract the operation of any machine which Leads to and completes a **communication** of record, is telegraph **operation** and that such operation is covered by the Telegraphers' Agreement." In support of this position, the Telegraphers contend that throughout the developments in **communications** technology, from the early Morse instruments to today's more sophisticated instruments, this Board has supported the notion that the Telegraphers' Scope **Rule** follows the **work** or function of **communicating**, in **whatever improved** mechanical device it may be found. Award Nos. 4249, 4458, and 4516. As an alternative argument, submitted in oral argument in connection with the Clerks joining the dispute as a third party, the Telegraphers contend that if the Board finds that the Clerks have a right actually to perform the disputed work, then the Telegraphers should receive idle-time pay because of their **communications** work having been improperly contracted and/or assigned by the Carrier to the Clerks. And finally, the Telegraphers say that this Board heard all of the facts of this case when **it** rendered Award No. 9988 in 1961, and that it would be unjust for the Board to reverse itself at this late date.

The **Clerks'** position is that operation of the IBM equipment is **specifically** covered by their Scope **Rule**, which reads as follows:

"(a) Clerks. **Employees** who regularly devote not less than four hours per day to the compiling, writing and/or calculating incident to keeping records and accounts, transcribing and writing letters, bills, reports, **statements** and similar work, and to the operation of teletypes and office mechanical equipment and devices in connection with such duties and **work.**"

In support of this basic position, the Clerks **assert** in their November 26, 1971 Submission (Record page **354B**) that:

"... clerical forces at many other stations on the property operate the Key Punch machines, IBM machines, etc. exclusively. Some **examples** are at Milford, Utah, Geneva, Utah, Salt Lake City, Utah, **Yermo**, California and the Station in question, Las Vegas, Nevada. In addition, Traffic Department Offices at Los Angeles, California, Salt Lake City, Utah, Boise and **Pocatello**, Idaho, Portland, **Oregon** and numerous off-line agencies all have teletype machines operated exclusively by clerical forces."

The Carrier says that no "**communication work**" exists in the instant facts to be performed by anyone, because, with the exception of the manually produced card on the **IBM** key punch machines, which the Telegraphers recognize as clerical work, **all** operations of the IBM machines are fully automatic, thus, whatever information is transmitted or received is done automatically **and simultaneously** with the performance of essential clerical functions. A detailed statement of this basic position is given by the Carrier at pages 17-18 of its February 23, 1972 Response to the Clerks' Submission of November 26, 1971. (Rp. 376-377.)

"...whether or not the automated **nature** of the machines involved totally eliminated all **manual** functions would only have bearing upon the case if **substantial** and material remaining **manual** functions had as their sole purpose the performance of the work functions claimed by Telegraphers. In this case, however, as pointed out above, the primary clerical functions continued until the time the typewritten records were finally produced by the **IBM** machines and automatic teletype. Any manual procedures such as inserting key punch cards, inserting tape, pushing a button to activate the machines, etc., were still within the scope of clerical performance of clerical functions. The **communication** function to which the Telegraphers lay **claim** herein was still performed automatically as a simultaneous **concomitant /sic/** of the performance of these clerical functions. The trivial manual acts, upon which Award 9988 relied in concluding **that** the machines were not fully automatic, to the extent they had any materiality whatsoever, were still acts performed as a part, and for the purpose, of completing clerical functions. Accordingly, such argument afforded no basis of support whatsoever to the Telegraphers' claims to a **communications** function which itself was clearly performed fully automatically and simultaneously with the clerical functions prior to the time those clerical functions had been fully completed.

"The fact remains, therefore, that whether or not the machines involved were fully and totally **automatic**, the particular **communications** functions claimed by the **Telegraphers** herein were certainly performed as a full and total automatic **concomitant /sic/** of the performance of clerical functions and there were no specific, independent work functions directed exclusively at the performance of the **communication** function Telegraphers' claim. Despite the erroneous conclusions of the majority in Award 9988, therefore, it should be clear that Award 8656 was not only 'final and binding' but also wholly correct in its determination that there was no work involved in the operation of these machines which Telegraphers could properly claim **the** right to perform."

The Carrier also asserts that denial Award No. 8656 is controlling in this case under principles of res judicata and **estoppel** by judgment.

DISCUSSION

The claim in Award No. 8656 involved claimants and IBM equipment at Salt Lake City, Utah, whereas this claim involves claimants and **equipment** at Las Vegas, Nevada. Thus, the dispute resolved by Award No. 8656 **and** this dispute do not have **the** identity of subject matter which is essential to the application of the doctrine of **res** judicata. **See** Award No. 6935 for an appropriate application of **res** judicata. Nor can the Board **summarily** conclude that Award No. 8656 **is controlling** on issues presented in Award No. 9988, because the opinion in the latter Award is based on findings of fact **on** the pivotal issues which are different from the **findings** in the former **Award. Consequently,** the Board must consider the instant claim anew and, based **on** the whole record **and** the oral argument, **make** a determination on the merits of the **claim.**

However, before **discussing** the merits as the Board **views them** in this proceeding, it is appropriate to review the conflicts between Award No. 8656 **and** Award No. 9988. In denying the Telegraphers' claim involving clerical operation of IBM equipment at Salt Lake City in Award No. 8656, this Board stated:

"A careful review of the record does not support petitioners' claim that other employees of the Carrier are **performing work** belonging exclusively under the Telegraphers Agreement. Rather such work as telegraphers might otherwise **perform or** might have rights to under the Agreement is **now** performed not by other employees but by the automatic operation of the **machines** in question.

"The Division has **not** supporter **[sic]** the proposition that **when an** automatic **machine** is installed to **perform** a certain function, the employee who previously performed that **function** is entitled to remain simply to watch the automatic **machine** operate. * * *

The above Award was **rendered** on **January** 12, 1959. On July 14, 1961, the Board reached a contra result in Award No. 9988, on the basis of a finding that the operation of the IBM teletype **transmitting** printer and receiving printer by clerical employees constituted a violation of the Telegraphers Agreement. The reasoning underlying this finding is indicated by the following extracts from the opinion in Award **No.** 9988.

"The machines **involved** in the Card Record process at Las Vegas, the work functions performed by the employees at Las Vegas in connection with the machines and the results achieved are identical in every detail to the machines used, work functions performed and results achieved in the same operations at the Carrier's **North Yard Office** in Salt Lake City. The question of the **use** of these machines at the Carrier's North Yard Office at Salt Lake City was decided in **Award** 8656 on January 12, 1959 and that Award denied the claim made by the **employees**. The key to the entire IBM system is the punch card in which holes are punched either **manual'y** or automatically from a punched tape to correspond with certain information which the associated equipment uses in the compilation and reproduction of various reports and records. The **new** system was put into effect by the Carrier on October 28, 1952. No part of the process as it pertains to the receipt and transmission of information on the teletype printer machines occurs as a result of activation of any device by the **employees** of the IBM Card Record Bureau -- the process is entirely automatic."

...

"We are in accord with what was said in Award No. 8656 in that the Division has not supported the proposition that when **an** automatic machine is installed to perform a certain function, the **employee** who previously **performed** the function is entitled to remain idly by and watch the automatic machine operate. However, from the evidence produced at the **hearing** in this docket, **we** find that these machines are not automatically operated. To the contrary, we find that the clerks who are now operating these machines must place these perforated cards **in** the machine, then push a button and then the machine operates."

...

"The Carrier, by its own **admission, states** that the tape produced electrically from cars **/sic/** by the process described in Item 3 is inserted in the teletype transmitter. This tape is inserted by a clerk and it is work which **comes** under the Telegraphers' Agreement. **The** teletype receiving printer is also work that comes under the Telegraphers' Agreement and has been performed in the past by telegraphers and not by clerks. The tape at a distant point that is transmitted to the teletype receiving printer must be inserted by someone to activate that machine."

"In Award No, 8656, ~~the~~ Board found that the work was not performed by other **employees**, but by the automatic operation of the machines in question. We find that the work performed on the two teletype receiving printers and the one teletype transmitter at the West-End Yard Office is performed by an automatic operation of the machines in question, but is activated by a **clerical employee**. Tape-producing **machines** activate /sic/ by clerks may not be used to reperforate tape or be **connected to** through circuits. Tape produced by a clerk must be fed into a transmitting machine for **communication** between on line offices by a telegrapher."

The facts **on** the operations of the IBM machines at Las Vegas, which are the subject of the foregoing extracts from Award No. 9988, have not changed since the Board's issuance of that Award in 1961. Indeed, the facts set out in that Award at page 46, relative to the **two** teletype receiving printers and the teletype transmitting printer, are identical to the facts on the same machines which the parties have agreed to in this proceeding (See item **7(a)-(e)**, supra 9). Thus, the Board **in** this proceeding must decide **whether** it agrees with the ultimate conclusions which were rendered on these facts by the opinion in Award No. 9988. The Board does not **agree**.

There is no dispute that the work of **operatingsix** of the seven types of IBM machines (items 1-6, **supra** 7) was properly performed by clerical employees. **This** work encompasses the following tasks: pushing a button to activate the machines; punching holes in a card by using a keyboard similar to a typewriter keyboard (one key punch machine, item 1); inserting punched cards into a machine to produce a punched tape (two card-to tape machines, item **3**); inserting punched tapes into a machine to produce cards which correspond with the information on the tapes (two tape-to-card **punch** machines, item 2); inserting punched cards into a machine for a separation into different classifications (**one** sorter machine, item **4**); inserting punched cards into **a** machine to produce a printed form which corresponds with the information on the cards, e. g., a wheel report, formerly typewritten (one accounting machine, item **5**); and inserting cards into a machine which prints on the cards the information represented by **the** holes in the card (one interpreter machine, item 6).

his brings us to the functions and the manual tasks involved in operating the two teletype receiving printers **and** the teletype transmitter, which, in the parties' agreed stat-t of facts (item 7, supra **9**), are described as follows:

"(b) The teletype receiving printer is activated by electrical impulse imposed automatically at some distant point. At the receiving point it produces information on a printed page. Using the **same** impulses, and simultaneously to the printing of the information on paper, the reperforator punches a tape on which information corresponding to that shown on the printed page is reproduced.

"(c) The tape produced by the reperforator is then used to produce punched cards by the process described in Item (2) above.

"(d) The teletype transmitters operate in the same **manner**: The tape produced electrically **from** cards by the process described **in Item** (3) is inserted in the teletype transmitter. Electrical impulses imposed by the code on the tape activate the teletype transmitter. The machine produces **a** printed copy of the information contained on the tape and at the **same** time reproduces the same information on a receiver at **some** distant point.

"(e) A reperforator at the distant point of reception duplicates the information on a tape and the entire procedure is repeated."

The transmitting printer referred to in these facts is the first order of the Board's interest, **because, as between** the transmitting printer and the receiving printer, the **transmitting** printer entails a **greater amount** of specific, identifiable work **which** must be performed in the **Las Vegas** office. In **examining** the facts in foregoing (d) and (e) on the teletype transmitting printer, one can see that a tape, prior to its use in the machine, undergoes a process whereby electrical **impulses** are imposed by code on the tape. These electrical **impulses, upon** insertion of the tape into the machine, activates the machine **which** then performs **two** functions simultaneously: the machine prints **out** information such **as** a train consist for local in-office **use**, and **concurrent** therewith, the machine also **communicates** the train consist to **an** outside point. The task of producing the print-out of the train consist or similar information by use of the transmitting printer is essentially a clerical function which is covered by the Clerks' Scope **Rule and**, moreover, it is quite clear that the manual **work** which is required to perform this **task** also results in the activation of the machine's capacity to carry out the second function of

communicating the train consist to an **outside** point. Except for the initial insertion of the tape, which must be done to perform the clerical work of printing the train consist for local use, no manual task is involved in the activation of the machine's **communication** functions. Thus, in a practical sense, the **communication** function of the teletype transmitting printer **must** be regarded as **being** carried out automatically, which, in turn, means that the operation of the transmitting printer involves clerical functions which come under the Scope Rule of the Clerks' Organization. The same holds true **when** the facts in foregoing (b) and (c) on the teletype receiving machine are considered. Here, the **insertion** of a tape in a transmitting printer **at** an outside point, by a clerk in the course of performing clerical **work**, results in information being **communicated** automatically to the receiving printer at Las Vegas. The receiving printer then simultaneously puts the information **on** a printed page and on a punched tape, which latter is used on the **tape-to-card** machine as described in item 7(c), supra 9. In this case, the communication function is **completed** coincident with the production of the printed page and tape in the Las Vegas office, and the only work to be performed in such office is the mere taking of the page **and** the tape from the receiving printer for use in the regular order of the office work. The handling of the page and the tape in this manner is essentially a clerical function which does not remotely involve the clerks' performance of **communication** work. So, as with the transmitting receiver, the operation of the receiving printer involves clerical functions which come under the Clerks' Scope Rule.

This **examination** of the teletype transmitter printers and receiving printer, in the **context** of the overall operation of the IBM **machines**, leads inescapably to the conclusion that the **communication** work which was performed by Telegraphers at Las Vegas prior to October 1952 did not survive as identifiable Telegraphers' work after the IBM equipment went into operation. It is true that the function of **communication** continued after the equipment went into use, and it is even possible that a greater **volume** of information was **communicated** than previously; **however**, the **communication** function was carried out automatically when clerical employees operated the teletype printers in order to perform clerical tasks, and no extra task of even a minuscule nature was performed to achieve the communication function.

Based on the foregoing, and the whole record, the Board concludes that the facts and issues in this **case** are parallel to the facts **and** issues in Award No. 8656, and that the denial ruling of that Award should be followed here. Accordingly, the Board finds that the Carrier properly assigned the disputed work to its clerical employees at **Las Vegas** and that such **assignment** did not violate the Carrier's Agreement with the Telegraphers. In view of this finding, it necessarily follows that the Board finds no merit in the Telegrapher's **contention** regarding idle time pay. The claim must therefore be denied.

The Board further finds that the foregoing decision is based upon consideration of the Carrier's **Agreement** with ehe **Telegraphers** and the Carrier's Agreement with the Clerks and that such decision disposes of the rights of all of the parties to this proceeding in accordance with the directive of the U.S. **Supreme Court** in Transportation Communication Employees Union v. Union Pacific Railroad Company, (supra, 2)

In reaching this **conclusion**, the Board has been mindful that the **Clerks'** participation in the case as a third party disputant has not resulted in the presentation to the Board of any additional or different factual information than was before the Board **when** Award No. 9988 was rendered on July 14, 1961. The Board is thus aware of the wide variance between the ultimate conclusions reached in that Award and the **conclusions** reached in this proceeding on the **same** facts. It is indeed a curious event **when** a claim which is found valid by a Board decision in 1961 is found invalid by a Board decision in 1975, even though the operative facts are the **same** in each decision. However, since the 1961 decision on parts **(b) and (c)** of the claim in Award No. 9988 has **been** vacated by the U.S. Supreme Court in Transportation-Communication Employees Union v. Union Pacific Railroad Company, **certainly** as a practical matter and **probably** in a legal sense also. the Board was obliged to examine these parts of the claim de novo, and in a manner which could have resulted in **affirmance** or denial of the claim, but without giving Award No. 9988 any **precedential effect**. The Board has **fulfilled this obligation** and it therefore **serves no useful purpose** to attempt to explicate the reasons for the opposite **conclusions** reached in Award No. 9988 and in this proceeding.

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 Employer, 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 the **Agreement was** not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, **Illinois**, this 29th day of August 1975.