

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO BURLINGTON AND QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM.—

"Claim of General Committee of The Order of Railroad Telegraphers of The Chicago, Burlington and Quincy Railroad Company, account First, Second, and Third trick operators at Prairie du Chien, Wisconsin, being displaced by employees other than those included in Scope Rule No. 1, Telegraphers' Agreement. It is the claim of the General Committee that these employees: C. C. Howard, 1st Operator, E. C. Thiessa, 2nd Operator, and E. A. Stovenal, 3rd Operator, be returned to their regularly assigned positions from which displaced and reimbursed any monetary loss sustained thereby. The amount due to be determined by a check of the records."

STATEMENT OF FACTS.—Although this was a joint submission, separate statements of fact were submitted by the parties. The employees' statement was as follows:

"C. C. Howard, 1st Operator, E. C. Thiessa, 2nd Operator, and E. A. Stovenal, 3rd Operator, were regularly assigned to First, Second, and Third trick operator positions respectively at Prairie du Chien, Wisconsin, having obtained the positions through the exercise of their seniority rights. These employees were removed from their respective regularly assigned positions on May 26, 1931. Their removal therefrom was involuntary and not by choice insofar as they were concerned. During the period of incumbency these operators, in addition to their other duties, were required to transmit and receive commercial and railroad messages, and reports of record. Thereafter, other employees of the railroad who held no seniority as telegraphers, assumed these duties including the transmitting and/or receiving of Western Union (commercial) and railroad messages, and reports of record, all of which were handled by the three operators theretofore and prior to their having been displaced. These three operators, upon being displaced, exercised their seniority elsewhere in accordance with the displacement privilege as provided in the Telegraphers' Agreement." The carrier's statement was as follows: "Prior to May 26, 1931, the station force at Prairie du Chien, Wis., consisted of one agent, three operators, and one assistant agent, who also worked as freight handler at the freight house—a total of 5 employees. Three operator-levermen were employed at Crawford Tower, an interlocking plant $2\frac{1}{2}$ miles south of Prairie du Chien, where the Burlington and Milwaukee Railroads cross. The three operators at Prairie du Chien were assigned hours 8:00 A. M. to 4:00 P. M.; 4:00 P. M. to 12 midnight; 12 midnight to 8:00 A. M. The first trick operator averaged 4 hours per day handling train orders, transmitting and receiving Western Union and Company messages; an average of 1 hour per day assisting in handling baggage, mail and express and freight, and 3 hours in handling clerical duties. The second trick operator averaged 2 hours per day handling train orders and other telegraphic work, and the remaining 6 hours per day acting as cashier, ticket clerk, and handling other clerical duties. The third trick operator averaged 3 hours per day on train order and other telegraphic work, and 5 hours per day handling mail, baggage,

and express and assigned clerical work. The three operator-levermen at Crawford Tower handled the interlocking plant and a small amount of train order work but no clerical duties. On May 26, 1931, the three operators' positions at Prairie du Chien were abolished and since that date all train orders and other telegraphic work, both Western Union and company messages, have been handled by the three operators at Crawford tower. Subsequent to the above date the station force at Prairie du Chien has consisted of one agent, one cashier-ticket clerk, one night ticket clerk, and one freight handler, a total of four employees. The assigned hours of the two clerks are 10:00 A. M. to 7:00 P. M. and 10:00 P. M. to 7:00 A. M.

An agreement between the parties bearing effective date September 1, 1927, was placed in evidence, and Rules 1 and 2 of that agreement, as set forth below, were specifically cited as bearing upon the disposition of the dispute.

POSITION OF EMPLOYEES.—The contentions of the employees were stated as follows:

"Prior to May 26, 1931, three telegraph operators were employed at Prairie du Chien, Wisconsin, on the La Crosse Division of the Chicago, Burlington and Quincy Railroad Company. The regularly assigned incumbents of these three telegraph jobs at that time were—

C. C. Howard	1st Trick Operator.
E. C. Thiessa	2nd Trick Operator.
E. A. Stovenal	3rd Trick Operator.

"The basic scheduled rate of pay as shown in the Telegraphers' Agreement was Sixty-four cents (64¢) an hour.

"These three telegraph jobs at Prairie du Chien are incorporated in the Telegraphers' Agreement. The current schedule effective as of September 1, 1927, was then, and is now, in effect. Prior to the change that took place on May 26, 1931, and because of which three operators were dispensed with, the force consisted of the following employees:

Agent	62¢ an hour.
1st Operator	64¢ an hour.
2nd Operator	64¢ an hour.
3rd Operator	64¢ an hour.

"After the change on that date the force consisted of the following employees:

Agent	62¢ an hour.
Two Clerks	approximately \$115.00 per month, each.

"This change in the force at Prairie du Chien clearly indicates, and is offered as proof that two clerks were substituted for the three telegraphers at that point. The management did not notify the General Chairman or other representatives of the employees of any proposed change either before or after it was made, therefore, the action taken was unquestionably an arbitrary act of the management.

"Telegraphers (operators) have always performed routine clerical work in addition to their telegraph duties. This practice has been in effect since the advent of the railroads. The condition at Prairie du Chien, where the three operators performed routine clerical work was in no respect different from the condition that has always prevailed, and still prevails, at all stations where telegraphers are employed.

"These telegraphers transmitted and received messages and reports of record by telegraph; whereas, employees substituted for these telegraphers and classified as clerks are now performing this same work, the only difference being these messages and reports of record are transmitted and received by telephone, therefore, we contend that the changing of method of transmission and reception of messages from telegraph to telephone does not create new positions nor does it materially change the duties of the employe filling the positions, therefore, does not constitute or justify reclassification, or arbitrary action of the management, whereby jurisdiction is transferred to another class, and that such an act, if committed, is in direct violation of the Telegraphers' Agreement.

"Scope Rule No. 1, of The Telegraphers' Agreement reads as follows:

"The following rules and rates of pay shall apply to positions held by telegraphers, telephone operators (except switchboard operators), agents, agent-telegraphers, agent-telephoners, printer-operators, wire-chiefs, tower-men, levermen, tower and train directors, block operators and staff men shown in wage scale, who shall be hereinafter considered employees within the meaning of these rules."

"We particularly call the Board's attention to the fact that the terms telegraphers and telephoners are included in the above quoted Scope Rule, which rule defines the jurisdiction of the class of employees represented by The Order of Railroad Telegraphers. Interpretations by Governmental Tribunals wherein the terms telegraphers and telephoners are defined, and the work to be defined by such employees clearly set forth, will be cited later on in this submission.

"The question as to whether or not the two clerks substituted for the three telegraphers (operators) actually perform telegraph service, i. e., transmit and/or receive messages and/or reports of record by telephone, in our opinion deserves and should be given careful consideration by this Board. If it is found they do, the claim of the employees we represent should be sustained, and if it is found they do not, the claim should be denied.

"We assert that it is a fact that these two clerks are transmitting and/or receiving Western Union and railroad messages and/or reports of record between the station at Prairie du Chien and Crawford Tower (a distance of approximately one mile) where three telegraphers are maintained.

"In the first place the management does not dispute the fact that messages are handled by telephone by and between the clerks at Prairie du Chien and the operators at Crawford Tower. We made a 10 day check of the Western Union and railroad messages handled, showing the number sent and received (exchanged between the operators at Crawford Tower and the Clerks at Prairie du Chien), covering the period from August 12, 1935, to August 21, 1935, inclusive. While this was a slack period, and the number will increase as business conditions improve, it was found by actual check that the total number of messages of all kinds, sent and received, by the clerks at Prairie du Chien, during the 10 day period mentioned, was 268. See Exhibit 'A.'

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"The carrier in this case contends these positions were discontinued and new positions were created. We emphatically dispute that contention for the reason the carrier's position is untenable, cannot be substantiated by the facts, and, is therefore, a mere subterfuge, resorted to in order to becloud the real issue.

"The duties performed by these clerks are substantially the same as those performed by the operators before the change was made. These clerks are transmitting and receiving messages and reports of records by telephone and we have cited authority to show that this difference (as between telegraph and telephone) of handling is inconsequential and does not justify such a change as was made at Prairie du Chien. The jobs at Prairie du Chien were not discontinued nor were new jobs created but instead it was a clear case of substitution. Clerks were substituted for operators and obviously for the reason that the rate of pay of the clerks, which we are told is approximately \$115.00 a month, is less than the scheduled rate of pay for the operators, which was sixty four (64¢) an hour.

"We concede that when there is no longer any work to perform a job can be abolished; but, so long as there is work to perform, a job cannot be abolished by a mere declaration to that effect. In this particular instance it is clearly shown there is work to be performed and is being performed by employees who were substituted for the operators.

"You will find included in The Telegraphers' Agreement, page 24, three operator positions at Prairie du Chien, also position of agent. This signifies that the organization representing telegraphers was granted jurisdiction of these jobs. The Order of Railroad Telegraphers has not relinquished jurisdiction of the Prairie du Chien jobs, therefore, the arbitrary removal thereof from the schedule is in violation of the Telegraphers' Agreement.

"Rule No. 2, paragraph (b) reads as follows:

"Entering of employees in the positions occupied in the service or changing their classification or work shall not operate to establish a less favorable rate of pay, or condition of employment than is herein established."

"Rule No. 2, Paragraph (c) reads as follows:

"Where existing pay-roll classification does not conform to Rule 1, employees performing service in the classes specified therein shall be classified in accordance therewith."

"It is clearly evident that both of the above quoted provisions of the Telegraphers' Agreement were violated by the carrier who was a party thereto.

"The management has complained because the Committee did not immediately after May 26, 1931, raise objections. Any delay in doing so is chargeable to the carrier. The carrier was responsible for the change, had knowledge of it, and should have notified the employees' representatives but failed to do so. This accounts for the delay.

* * * * *

"These claimants were subjected to displacement from positions they were entitled to under the terms of the agreement, and to monetary loss because of these irregular displacements, therefore, restitution is claimed. The carrier is not vested with authority to flagrantly disregard the terms of the contract entered into between it and representatives of the employees, as we contend was done in this case. A contract is a document for the protection of the parties thereto and is intended to afford protection in accordance with the provisions contained therein. These employees should not be deprived of their rights and should not have been subjected to monetary loss, therefore, their request for redress is not unreasonable and should be granted. We respectfully ask the Board to grant them this consideration."

POSITION OF CARRIER.—The contentions of the carrier were stated as follows:

"It will be observed by the Board that the duties of the three operators at Prairie du Chien were varied and that much of their time was devoted to work of a clerical nature. Moreover, when the train order and telegraphic work was transferred to Crawford Tower and the operators' positions abolished, there remained the need for clerical assistance at Prairie du Chien, hence the two clerks were employed to handle the clerical work formerly assigned to the three operators.

"The committee's contention that other employees of the railroad, who held no seniority as telegraphers, assumed the duties, including the transmitting and/or receiving of Western Union and railroad messages after the operators' positions were abolished, is not supported by the facts. All train order and other telegraphic work, including the sending and receiving of Western Union and company messages to outside points, is handled by the three operator-levermen at Crawford Tower. There are no commercial messages or telegrams communicated to or from outside points at Prairie du Chien. A commercial telephone is located at Crawford Tower and parties sending or receiving Western Union messages may communicate direct with the operators at that point. No messages are handled by company telephone in lieu of telegraph, either forwarding or receiving, but are telephoned to or from the Tower from which point they are transmitted or received by telegraph. Company messages are received and sent from Crawford Tower and are handled by telephone with Prairie du Chien station.

"There is no longer any requirement for issuing train orders at Prairie du Chien as they can be handled to better advantage at Crawford Tower, which is the control point for the single track operation between Crawford and Ports over the Wisconsin River.

"The three operators' positions at Prairie du Chien were discontinued in the interest of economy and made necessary because of the reduction in business.

"It is the position of the management that there is nothing wrong or irregular, or which is in conflict with existing schedule rules or practices, to transfer the train order and other telegraphic work to Crawford Tower and by so doing reduce the forces at Prairie du Chien. The operators located at the Tower have sufficient time to handle the additional wire work. However, as much of the operators' time at Prairie du Chien was consumed in

handling bona fide clerical work, it was necessary to employ two clerks when the operators' positions were abolished and this was done in accordance with our agreement with the Clerks' Organization.

"The Board's attention is directed to the fact that more than four years have elapsed since this change was made before any protest was made by the Committee, and if they considered it a violation of the agreement, it is difficult to understand why they slept on their rights for this length of time without protest. It is apparent the protest in this case is based upon a hope rather than any rule or understanding.

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"The Board's attention is directed to the Committee's Exhibit 'A,' which is a statement showing the number of Western Union and company messages telephoned by the clerks at Prairie du Chien to the operators at Crawford Tower over a 10-day period in August 1935. It will be observed there were a total of 20 (an average of 2 per day) Western Union messages 'phoned from the station at Prairie du Chien to the operators at Crawford Tower. However, it will be noted that there were none 'phoned from the Tower to the station. In other words, all such messages received at the Tower were telephoned direct to the party to whom addressed.

"It is reasonable to assume some or all of the 20 messages 'phoned from the station to the tower were 'phoned to, or left at, the station by parties who were not familiar with the arrangement in effect, or by parties desiring to send a message before boarding, or after alighting from, a train. Surely our obligation to serve the public as a Common Carrier justifies acceptance of these messages and forwarding them to the Tower thereafter to be transmitted by the operators. While this check does not show the information, it is an actual fact that these 20 Western Union messages represent only a small percent of those telephoned direct to the operators at Crawford Tower. That part of the statement regarding the number of company messages 'phoned between the station and Tower is conclusive proof that all such messages are handled through the Crawford office and are not being sent over the wire to outside points by the clerks at Prairie du Chien. The fact that they are 'phoned by the clerks at the station to the operators at the Tower does not deprive the operators of any work under the Schedule Agreement.

"Before a Western Union or company message is transmitted over the wire from the telegraph office at Crawford Tower, the telegraphers have no voice in saying how it will be handled to the telegraph office. Likewise, after a message has been received by the operator, the Telegraphers' Organization has no voice in saying how delivery shall be made.

"It is the position of the management that the work performed by the three operators at Prairie du Chien covered in the Telegraphers' Agreement was transferred to Crawford Tower when the operators' positions were abolished; that the two clerical positions were properly assigned in accordance with the Clerks' Agreement and that the Committee's protest is not supported by any rule, understanding, or past practice."

OPINION OF BOARD.—It has been held, repeatedly by this Board, first, that carriers have a right to abolish positions included in agreements when there is no longer work to be performed in those positions, and, second, that the removal of work from the scope of agreements by arranging for its performance by employees not covered by those agreements gives rise to violations for which redress may be claimed by and granted to the employees. There appears to be no contention by either of the parties to this dispute in conflict with these holdings. The basic issue here involved is one of fact: whether the telegraphic positions at Prairie du Chien were actually abolished, the work of these positions being transferred to Crawford Tower; or whether telegraphic service continued to be rendered at Prairie du Chien, the work of these positions being performed by clerks not falling within the scope of the Telegraphers' Agreement. This claim, which is based upon the second of these two views of the facts, alleges a violation as of May 26, 1931, requesting that the three operators who were then incumbents of these posts "be returned to their regularly assigned positions from which displaced and reimbursed any monetary loss sustained thereby." There is no evidence of record that these positions were not abolished in good faith in 1931, nor is there any evidence that telegraphic service was being performed at Prairie du Chien at

the time of this alleged violation. Since it is conceded by both parties that the operators in question performed clerical duties in addition to their telegraphic work, the appointment of two clerks in place of the three Operators at the time of the alleged abolition of the telegraphic positions cannot be accepted in and of itself as indicating that these positions were not in fact abolished. It appears that the protest which underlies this claim was not made till more than four years later, and that the evidence as to the performance of telegraphic service at Prairie du Chien relates entirely to the year 1935. Under these circumstances the claim as submitted cannot be sustained. It is unnecessary to decide in this case whether the conditions alleged to exist in 1935 constitute a violation of the agreement, for which appropriate redress may be sought, and the award in this proceeding is made without prejudice to the resubmission of the issue on that basis, failing agreement between the parties as to the elimination of the practices by which the employees deem themselves aggrieved.

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 the facts of record do not establish a violation of the agreement as of May 26, 1931, on the basis of which the particular operators here involved are entitled to be restored to their former positions and reimbursed for any monetary loss sustained by virtue of the abolition of their positions.

AWARD

Claim denied, but without prejudice to the determination of the issue if resubmitted on the basis of conditions prevailing at Prairie du Chien in 1935 and thereafter.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1937.