

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Claim that position of teletype operator at Fourth and Berry Streets Freight Station at San Francisco, California, and at the Kirkham Street Freight Station at Oakland, California, should be bulletined and assigned in conformity with Rule 33 of the Clerks' current Agreement."

EMPLOYEES' STATEMENT OF FACTS: Pursuant to the inauguration of fast freight service from San Francisco and Oakland to Los Angeles, Calif., the carrier installed teletype machines in its local freight stations at Fourth and Berry Streets, San Francisco, and Kirkham Street, Oakland. The employees covered by the agreement between the Order of Railroad Telegraphers and the carrier were assigned to operate these machines, and it is these two positions or work performed by the employees who occupied them, that are in dispute.

Prior to the installation of teletype machines in December, 1935, all clerical and other station work at these two freight stations was performed by employees covered by the agreement between the Brotherhood of Railway Clerks and the carrier. All waybills were typed by Waybill Clerks and were forwarded on trains carrying the shipments, or mailed on passenger trains operating on later schedules. The teletype machines were installed to permit the typing of waybills and automatic transmission of information contained on the waybills to the point of destination so that the waybills or information contained thereon would be on hand prior to the arrival of shipments of freight, and thereby permit of the prompt delivery of the same to consignees.

An incidental duty of these teletype clerks is to transmit such carrier telegrams as are necessary, which telegrams, prior to the installation of the teletype machines, was carried to the telegraph offices by messengers, employees covered by the clerks' agreement. The petitioner claims that these telegrams now approximate five in number daily. Also incidental to the teletype clerical work is the sending or transmission of so-called manifests of freight, an entirely new service, as shown in carrier's Exhibit "U."

CARRIER'S STATEMENT OF FACTS: The teletype operators involved in this claim operate teletype machines located as follows:

One set in the Carrier's freight station at Kirkland Street, Oakland, and one set in the Carrier's freight station at Fourth and Berry Street, San Francisco. The machines operate entirely and exclusively on telegraph circuits, to

the less, there does not appear to be any complaint so far as the Clerks' Organization is concerned in connection with this operation, notwithstanding that it is virtually the same operation concerning which they are now complaining as being performed at Fourth & Berry Sts. Freight Station, San Francisco, and Kirkham Street Freight Station, Oakland.

(c) It will be observed by Exhibit "J" that Petitioner originally included in this dispute the operation of a teletype machine at Tracy, Calif., which, however, is not included in the claim Petitioner has now presented exparte to this Board.

The carrier requests this Board to dismiss this dispute for want of jurisdiction; if however, the Board does assume jurisdiction, we ask that the Board deny the claim of the Petitioner, and further request the Board to not, under any circumstances assume jurisdiction of the dispute until and unless the Order of Railroad Telegraphers is made a party to the dispute and proceedings.

OPINION OF BOARD: In the preceding Award (No. 615), extended consideration was given to the relation between the clerks and the telegraphers' agreements, and it was found in that case there is no conflict between them. To avoid repetition, reference thereto is made.

In the instant case a different situation is presented. It is quite obvious from the comprehensive statements and arguments in this case, that the following situation exists:

(a) That at the time the last agreements with the respective organizations were entered into, consideration was not given to the use of these teletype machines and, consequently, neither of the agreements definitely contemplated exclusive use of them;

(b) As to the Mediation Agreement of 1930 entered into between the carrier and the telegraphers, in which proceeding the clerks were not a party, the latter could not be bound by it either if it constituted an encroachment on the clerks' rights or even if it attempted to set up a new limitation curtailing its permissive rights in the circumstances;

(c) That as to the attempted agreement between the heads of the respective organizations as to their relative rights concerning these machines, it is indefinite in this regard at least that it certainly did not anticipate their use as now practiced, and cannot be said to have definitely assigned rights to either party in the matter. It is subject to the further infirmity that the carrier was not a party to it.

From the foregoing it is obvious that this Board is in no position to say with that degree of certainty which should back its awards, that the work here involved is the exclusive prerogative of either organization. It may be that it is competent for either to perform it, but there is quite insufficient basis to reach a conclusion that it might be done by one to the exclusion of the other.

Consequently, the case presents a real jurisdictional dispute, in that it is rather over which organization should have the right to perform the work as now performed, than as to which does have such right. Of such disputes this Board has no jurisdiction.

The case is accordingly remanded for conference between the three parties in interest to adjust if possible, by agreement, failing which their proper forum is the National Mediation Board.

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 employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934; and

That the Board is without jurisdiction.

AWARD

Claim remanded in accordance with the above Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of April, 1938.