Award No. 998
Docket No. TE-913

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wiley W. Mills, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTA AND WEST POINT RAILROAD COMPANY

THE WESTERN RAILWAY OF ALABAMA

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on The Atlanta and West Point Railroad—The Western Railway of Alabama that the carrier violated the prevailing Telegraphers' Agreement by abolishing the second trick telegraph position on the Atlanta and West Point Railroad in 'G' telegraph office, Atlanta, Ga., effective January 8, 1933, and transferring such work to Train Dispatchers not under Telegraphers' Agreement in 'J' and 'DO' dispatchers offices, Atlanta; and the further claim that the telegrapher regularly assigned to the second trick telegraph position in 'G' telegraph office prior to January 8, 1933 and who was improperly removed from his position on that date, shall be restored thereto if he so desires, or otherwise the position shall be filled in conformity with the governing rules of Telegraphers' Agreement; and that all employes under said Agreement adversely affected by these unilateral and violate acts of the carrier shall be compensated for all wage loss suffered retroactive to January 8, 1933."

JOINT STATEMENT OF FACTS: "1. For several years prior to January 2, 1933 two telegraphers were assigned to work at 'G' office, Atlanta, one assignment being filled from Roster of Georgia Railroad telegraphers and subject to Georgia Railroad Agreement, working from 8:00 A. M., to 4:00 P. M. daily, and one assignment filled from Roster of Atlanta and West Point Railroad and subject to A. & W. P. Agreement, working from 3:00 P. M. to 11:00 P. M. daily.

"2. Effective January 2, 1933 assignment filled from A. & W. P. Roster was declared discontinued on Sundays and any necessary telegraphing required to be done between hours formerly covered by this assignment on Sundays was handled by Train Dispatchers.

"3. Effective January 8, 1933 this assignment was declared abolished and thereafter necessary telegraphing between hours said assignment formerly worked was handled by Dispatchers under instructions contained in Bulletin covering abolition of the telegraphers assignment, which said bulletin provides as follows:

> 'After tomorrow, January 7, 1933 "G" telegraph office in General Office Building, Atlanta, becomes a daily excepted Sunday Office, and open only between the hours of eight-thirty (8:30) A. M. and five-thirty (5:30) P. M. on week days. Any telegraphing required during the time this office is closed will be handled by trick train dispatcher, "J" office, Atlanta.' "

and the carrier submits that it having been the practice for the dispatchers to handle message work, etc., for a long period of years, and that practice having continued through all of the years of existence of the agreement between the carrier and its telegraphers, it has become an established practice under the agreement and the claim now made that it is contrary to or in violation of the terms of the agreement can not prevail.

"As to the contentions of the employes that provisions of Articles 1 and 3 of the agreement have been violated, the carrier respectfully submits that there is nothing contained in said articles of agreement by virtue of which exclusive rights may be claimed by or sustained to the telegraphers, and again citing the fact that the performance of telegraphic message and report work by dispatchers has been a practice of long years standing and is an established practice under the agreement, the carrier denies that there has been any violation of the Agreement.

"The telegraphers have cited this carrier to a large number of cases covered by Awards of the Third Division, being some twelve cases in all, upon which said telegraphers rely as being in support of their contentions. Due to the large number of cases cited, and bearing in mind the oft repeated statement that 'each case should be decided upon its merits and without regard to contentions at other points' the carrier will not here undertake discussion of the merits thereof other than to point out that generally there seems to be a lack of analogy as between the cases cited and the one here in issue, lack of analogy being in the fact, first that in the instant case there exists a precedent, the roots of which are strongly established in practices, under the agreement, of long years standing and second that in no case cited is involved question of telegraphing by dispatchers. However, the carrier will reserve to itself the privilege of citing other cases in support of its position should such citation seem desirable or necessary upon further development of this case.

"Pointing to the joint statement of facts, and to the carrier's review thereof wherein attention is called to certain additional relevant facts, the carrier respectfully submits that when the second trick telegrapher's position was abolished and an indefinite and infinitesimal volume of telegraphic message and report work was transferred back to the dispatchers in January 1933, the notice and bulletin at that time issued gave due notice to all the telegraphers, including their committee of representatives, and gave to all of them full opportunity to assert any question covering the change, or as to alleged violation of their agreement, but they did not at that time question the action; to the contrary, having full knowledge of the terms of the agreement, and the practices thereunder, and with full knowledge of the changes in the assignment and distribution of the work, they made no protest, but accepted the change, and it is the position of the carrier that such acceptance, by the telegraphers, indicated their acquiescence therein as being in accordance with the past practices under the agreement, and as being not in conflict with the agreement, and further it is the position of the carrier that having accepted the change in 1933, the telegraphers can assert no sound basis for the claim as filed at this later date.

AND FURTHER:

"The carrier reserves the right to answer any further or other matters advanced by the petitioners (telegraphers) in relation to the issues in this case, either as advanced by the petitioners in their statement of position, to be set forth in this joint submission which said statement of position of employes this carrier has had no opportunity to review, or otherwise advanced, whether written or oral."

OPINION OF BOARD: The claim of the General Committee and the positions and contentions of the employes and the carrier are sufficiently shown in the statement hereinabove. There was a joint statement of facts from which it appears that:

"1. For several years prior to January 2, 1933, two telegraphers were assigned to work at 'G' Office, Atlanta, one assignment being filled from Roster of Georgia Railroad telegraphers and subject to Georgia Railroad Agreement, working from 8:00 A. M. to 4:00 P. M. daily, and one assignment filled from Roster of Atlanta and West Point Railroad and subject to A. & W. P. Agreement, working from 3:00 P. M. to 11:00 P. M. daily.

"2. Effective January 2, 1933, assignment filled from A. & W. P. Roster was declared discontinued on Sundays and any necessary telegraphing required to be done between hours formerly covered by this assignment on Sundays was handled by Train Dispatchers.

"3. Effective January 8, 1933 this assignment was declared abolished and thereafter necessary telegraphing between hours said assignment formerly worked was handled by Dispatchers, under instructions contained in Bulletin covering abolition of the telegraphers assignment, which said bulletin provides as follows:

> 'After tomorrow, January 7, 1933, "G" telegraph office in General Office Building, Atlanta, becomes a daily except Sunday office, and open only between the hours of eight-thirty (8:30) A. M. and five-thirty (5:30) P. M. on week days. Any telegraphing required during the time this office is closed will be handled by trick train dispatcher, "J" office, Atlanta.' "

In its discussion, the carrier says, "This case, like the one presented in Docket TE-912, represents a stale demand," and cites several awards in support of its position. However, as stated in the Board's Opinion in Award No. 993, Docket TE-912, a large majority of awards have held the other way and we refer to Award Number 993, Docket TE-912, for further discussion on the question of jurisdiction and proceed to the consideration of the claim on its merits.

Here, as already shown, there is little dispute upon the facts. The contention is largely on the amount and character of work which had formerly been done by the second trick telegrapher in "G" office and later after January 8, 1933, was done by the dispatcher or telegraphers in an adjoining room known as "J" Office.

The carrier contends that much of the work formerly done by telegraphers in "G" office and now done by dispatchers is work of dispatchers, such as directing movement of trains, etc. The carrier says: "The point of this expression, in its application to the instant case, is that, even though a telegrapher had been employed to perform work of the character described in petitioner's exhibits, it is no infringement upon Telegraphers' Agreement to turn back to the dispatchers all of such work incidental to their duties as train dispatchers," and "such other telegraph work as the petitioner shows is almost infinitesimal in amount."

We cannot agree with carrier's contention. It clearly appears that the work was considerable; and it appears beyond a question that work, which had been done by the telegrapher whose position was abolished and which came within the purview of telegraphers' work under the existing agreement, was thereafter done by employes not under the said agreement. As was said by Referee Lloyd K. Garrison in Award 231, page 2:

> "Whenever a particular position is negotiated into an agreement and specifically placed there by the parties it means only one thing, and that is that so long as the work is to be done it will be done by an employe filling that position under the agreement at the rate of pay fixed in the agreement. The position can be abolished if the work is not there but it cannot be handed over to an employe not covered by the agreement."

As has been said in other awards, there is overlapping of work performed by this class of employes. The gravamen of the grievance here complained of is that, apparently without any effort whatever to reach an agreement, an attempt was made by unilateral action to abolish a position within the agreement while there remained appropriate, agreement-covered work which was afterwards actually given over to be done by other employes not within the agreement. That these persons outside of the agreement had done the same kind of work before seems to be beside the point. If this can be done with impunity, the agreement has lost its protective force. There is no excuse for not attempting to bring about apparently needed changes in a legal manner by negotiation and mutual consent.

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The claim will be sustained in accordance with this opinion and upon the understanding that compensation will not be allowed or paid to anyone for any time prior to the 24th day of July, 1937.

AWARD

Claim sustained as set forth in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of December, 1939.