Award No. 1488
Docket No. TE-1128

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway that: (a) the second telegraph position 'FA', Santa Fe, New Mexico was improperly abolished and (b) that all employes adversely affected as the result thereof be reimbursed retroactively any monetary loss."

STATEMENT: This is a resubmission of the case covered by Award 1148 in which the Board remanded the matter to the parties to adjust the dispute as defined in the Opinion of Board through negotiations. The facts and arguments set forth in Award 1148 as well as in the resubmission of the case will not be restated.

OPINION OF BOARD: This is a resubmission of the claim covered by this same docket number and previously considered in Award 1148. At that time this Division decided that there was no violation of the agreement by the "mere abolition of the second telegraph position and the reassignment of the hours of the remaining positions." The opinion pointed out that the "only appropriate basis of complaint under the circumstances of this proceeding is that, as a result of the abolition of the second telegraph position and the reassignment of hours, work subject to the Telegraphers' Agreement is being performed by outsiders."

It was not clear that the parties had taken the required preliminary steps to adjust the dispute by negotiation. Nor was the record adequate to determine whether and in what manner the agreement had been violated. The case was remanded in order that an attempt might be made to adjust the dispute by negotiation and for a better record on the issue of violation "on the basis of the dispute as defined in the Opinion of the Board."

The Carrier still maintains that the required preliminary steps have not been taken. We concur with the views of the Carrier not only as to the desirability but as to the necessity of this initial procedure of negotiation. But considering the whole record in connection with the circumstance of the resubmission, we think it now affirmatively appears that a further resubmission of the case for this purpose would be futile. It is apparent that the parties cannot agree, and the case should now be considered on that basis. The situation is analogous to that which we so often find in legal proceedings where a demand coupled with a refusal is a condition precedent to the bringing of a suit, and it is held that if it affirmatively appears that the demand will be refused it need not be made. The law does not require the doing of a vain thing. We shall therefore consider the case on the merits.

On the record the case is not materially different from what it was before. The question is simply did the work as performed in this instance by

which telegrams were sent to the particular telegraph office for transmission or by which messages were delivered after receipt belong exclusively to the telegraphers. We think not. This is not a case such as is considered in Awards 388 and 556 where one operator was assigned to do telegraph work in two agencies in violation of special rules of the agreement.

The Committee cites for our consideration Award 1302, the opinion in which was filed after the previous decision in this case, Award 1148. Award 1302 is not, however, in point. Whether the claim was there submitted on the basis that there had been a violation of the Scope Rule or of the special rule relating to train orders is not altogether clear; but the fact is that it related to work, the handling of train orders as those words have been interpreted, which was specifically designated by the agreement as being within the exclusive province of train dispatchers and telegraphers.

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;

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

That the facts of record show no violation of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of June, 1941.