

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that—

"1—Where automatic printers are in use, telegraphers will be used and one telegrapher and one puncher will be assigned to each machine so operated and receive compensation shown in wage scale, the necessary number of positions needed to comply with Rule 20 (i) in its entirety to be promptly bulletined to employes coming within the scope of the Telegraphers' Agreement on the Southern Pacific Company, Pacific Lines;

"2—On and after June 26th, 1939, extra unassigned employes represented by The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, who may be idle as a result of failure to comply with the formal request of the Committee that Rule 20 (i) be observed in its entirety will be compensated according to seniority rights and qualification."

EMPLOYEES' STATEMENT OF FACTS: "Printing telegraph machines were initially installed on this property in 1915. Positions occupied by operators of printing telegraph machines were incorporated in the agreement on this property between this Organization and Carrier effective September 1st, 1917, the rule at that time providing—

'ARTICLE 6

'Section I.

'In any telegraph office on the System where automatic printers are in use, telegraphers will be used in the operation of same, except punching.

'Where automatic printers are used there shall be a position designated as "Telegrapher-Mechanician," who will be in charge of printer equipment.

'In offices where more than one automatic printer is in use, there shall be the required number of positions designated as "Telegrapher-Clerks," to cover the entire period that such automatic printers are in operation, one Telegrapher-Clerk to be assigned to each automatic printer so operated.

'Telegrapher-Mechanician and Telegrapher-Clerks shall receive compensation shown in wage scale.'

pertaining to forces in connection with operation of the machines above referred to. At the conference I reiterated conclusion stated in my letter of December 4, 1934, file Tel. 132-20 in response to your query of November 30th, 1934, which was to the effect that the two Memorandums of Understanding of September 5, 1929, abrogated entirely Rule 20 (i) of Telegraphers' current Agreement, but notwithstanding, you requested me to reply to your letter of December 28, 1934.'

(Emphasis ours.)

"While the General Chairman indicated by letter on February 14, 1935, that he was not in accord, still he made no further complaint or protest against the Carrier's conduct for a period of over four (4) years, or until June 9, 1939, when the pending claim was resurrected and resubmitted. Surely this clearly demonstrates and proves that the Petitioner was in accord and acquiesced in the Carrier's application, that Rule 20 (i) had been definitely abrogated as outlined in the Carrier's letter of December 4, 1934, quoted in Statement of Facts at page 13, and reiterated in letter of January 21, 1935 (Carrier's Exhibit No. 32).

"It is also the Position of the Carrier that even if the Memorandum of Agreement of September 5, 1929, was not in effect, the provisions of Agreement Rule 20 (i) could not be applied to the operation of Teletype automatic printing machines, because that type of automatic printer was not in use at the time of the execution of Agreement Rule 20 (i), and the further fact that the operation of such machines has been definitely covered by the Teletype Agreement of January 11, 1930.

"The Carrier having fully demonstrated by factual data, the utter lack of merit to Part 1 of the claim as described in the Employees' Notice to File Ex Parte With the Board, requests that Part 2 of the claim demanding compensation in behalf of unidentified and unknown employees be forthwith denied, because it is equally lacking in merit or agreement support.

CONCLUSION

"Inasmuch as we have definitely shown that no rule of the Telegraphers' Agreement has been, in any manner, violated, that Rule 20 (i), relied upon by the Petitioner no longer is in effect and consequently has no application to the facts in the present claim, but to the contrary, the Carrier having strictly adhered to such subsequently executed Memoranda of Agreements and Understanding, the Carrier requests that the claim in every particular be denied.

"For the Board to do otherwise than deny the claim would be in utter disregard of the principle enunciated in its Award 109 of October 15, 1935, wherein it was stated:

'It is not within the province of this Board to add to or take away language from an agreement made between the parties. In this case it would be necessary to alter the existing agreement between the parties in order to support the contention of the petitioner.'

OPINION OF BOARD: It is conceded that the claim relates only to automatic printers in the General Telegraph Offices at San Francisco, Portland, Los Angeles and El Paso. Rule 20 (i) which is here in question, and which relates only to General Telegraph Offices, reads as follows:

"Where automatic printers are in use telegraphers will be used, and one telegrapher and one puncher will be assigned to each machine so operated and receive compensation shown in wage scale."

The contentions of the parties will be considered, first, with respect to duplex and multiplex automatic tape printer machines and, secondly, with respect to teletypes.

I. Duplex and Multiplex Automatic Tape Printer Machines

The carrier contends that Rule 20 (i) was abrogated by the Agreement of September 5, 1929, which, it is alleged, relieved the carrier from the obligation of assigning one telegrapher and one puncher to each machine. This Agreement related only to duplex and multiplex automatic tape printer machines. The question of whether or not teletypes should be operated by telegraphers was then in dispute and was not settled until later when a separate agreement covering teletypes, dated January 11, 1930, was entered into.

The employees contend that Rule 20 (i) was not abrogated by the Agreement of September 5, 1929, because the purpose of that Agreement was solely to settle a dispute which had arisen as a result of the carrier's instructions of March 29, 1929, directing that employees should be alternated between the transmitting and receiving sides of the automatic printing machines. These instructions resulted in several telegraphers being eliminated from the machines because they were not qualified to punch. The employees promptly protested the instructions of March 29, 1929, and it is clear from the correspondence, the respective submissions of the parties to the Telegraphers Adjustment Board, and the terms of the Agreement of September 5, 1929, that the subject-matter of that Agreement grew directly out of the dispute precipitated by the instructions of March 29, 1929.

But this does not dispose of the question at issue. The Agreement of September 5, 1929, did not mention Rule 20 (i), but it had the effect of changing it very materially. Under the Rule one telegrapher and one puncher were to be assigned to each machine; the telegrapher's rate was higher than that of the puncher, and (until 1933) the puncher's seniority was confined to that of the office where he was employed. Under the Agreement of September 5, 1929, there might be on a given machine: (a) a telegrapher not qualified as a puncher, and a puncher. (This obtained in the case of telegraphers who had not been able to qualify as punchers and who, under the terms of the Agreement, were put back as telegraphers and were permitted to stay without having to meet the puncher tests.) (b) A telegrapher, qualified as a puncher, and a puncher. (c) Two telegraphers, at least one of whom would have to be qualified as a puncher. (d) Two punchers. Categories (b), (c) and (d) became permissible as a result of the provisions in the Agreement of September 5, 1929, to the effect that positions and vacancies would be bulletined to all telegraphers and punchers; that applicants would have to meet the puncher's requirements; and that the senior qualified applicant, whether a telegrapher or a puncher, would be assigned.

Thus the Agreement of September 5, 1929, materially changed Rule 20 (i), and the question may fairly be asked whether the Agreement was not intended to supplant Rule 20 (i) altogether. What did the parties have in mind? They obviously meant to supersede the requirements of Rule 20 (i) with respect to the **qualifications** of the workers who were to be assigned to the machines; did they intend also to supersede the requirements of Rule 20 (i) with respect to the **numbers** of men so to be assigned? The record leaves so many questions unanswered that we are not able to reach a definite conclusion.

We appreciate the necessity as a general rule of deciding cases on the basis of the records submitted to us and of not delaying matters by remanding records to the parties for supplemental information where it is possible to derive a conclusion one way or the other from the facts submitted, such as they may be. In the case now before us, however, the record presents such difficulties that after the most diligent study of which we are capable we have reached the view that we cannot conscientiously arrive at a final decision without additional information, the nature of which will now be specified.

In the Memorandum of Understanding of September 5, 1929, accompanying the Agreement of September 5, 1929, it was provided that "with the restoration of conditions as existed March 29, 1929"—that is to say, with the restoration of conditions as they were before the carrier issued its order that telegraphers and punchers should alternate in receiving and transmitting—the positions in the offices where conditions were restored would have to be renumbered "to designate as between Morse and printer positions." We take it that one purpose of thus differentiating between the Morse and printer positions was that under the Agreement of September 5, 1929, the successful applicants for new positions or vacancies on Morse circuits would not have to be qualified to punch, whereas this qualification would be required of telegraphers applying for new positions or vacancies on the printer machines. There followed a list of the names and numbers of the restored positions. This showed in San Francisco the existence of 9 Morse telegraphers with 1 extra man, 5 receiving side printers, and 12 punchers. The record shows that at San Francisco one Morkrum duplex machine had been installed in 1916 and one Terminal Multiplex in July or August 1927, and that "subsequently 3 additional Multiplex machines had been installed." But the record does not show whether any or all of these three additional machines were installed prior to the Agreement of September 5, 1929. In attempting to reconstruct what the situation was at San Francisco on March 29, 1929, we may pursue this line of reasoning: There being twelve punchers and the office being a three-shift office, one may suppose that 4 punchers were on duty during each shift and that, therefore, there were four machines in operation. But there were only five printers on the receiving side, and it seems clear that on March 29, 1929, there was as yet no alternating as between receiving side printers and punchers. If this be so, presumably at least one receiving side printer was on duty during each of the three shifts, which would mean that there must have been either three printers on one shift and one on each of the two others, or two on one shift and two on another and one on the third. In either event it is clear that within the literal meaning of Rule 20 (i), one telegrapher and one puncher were not being assigned to each machine. The record indicates that the punching work was more time-consuming than the receiving work and therefore it would seem that the carrier had assigned one puncher to each machine on each shift but had assigned a smaller number of telegraphers on the receiving side, and that, as the carrier stated in its submission, "a telegrapher assigned to or working on receiving side of automatic printers would move from one machine to another, or to the performance of other duties of his assignment, remaining with and removing copy from the receiving side of a particular machine only so long as it was actually in operation."

But in both Los Angeles and El Paso there were six punchers and only two receiving side printers. If, as may be assumed, each office operated on a three-shift basis, it would seem that on one of the three shifts at each office no receiving side printer would be on duty, and such receiving work as was necessary must have been done either by one of the Morse telegraphers or by a puncher (but if by a puncher there would then be alternating, which, as has been said, presumably did not then exist). The question is left in much uncertainty because there is nothing in the record to show that telegraphers assigned to the Morse circuits were used also to do receiving work on the automatic tape printers.

It is important that the situation as of March 29, 1929, be established as exactly as possible. For the effect of the Memorandum of Understanding was that the arrangements then prevailing and the work assignments set forth in the Memorandum were proper and in accordance with what was intended by the Agreement of September 5, 1929.

If, as the carrier has asserted, and as the list of positions as of March 29, 1929, would indicate was then the practice, telegraphers were not assigned to definite machines with punchers on a two-man-per-machine basis, how can one explain the instructions of March 29, 1929, that employees should "alternate between the sending and receiving channels so that the

time devoted to punching and receiving will be divided as nearly equally as practicable?" And how explain the statement in the carrier's submission to the Telegraphers Adjustment Board that Rule 20 (i) "merely states that each one telegrapher and one puncher will be assigned to the machine. The carrier has complied, not only literally, but also with the spirit of the rule in assigning the designated persons thereon."?

These statements seem to imply that the situation prior to the Agreement of September 5, 1929, was that to each machine two employes were assigned—one telegrapher and one puncher—and that the carrier simply proposed to alternate them on the respective sides of the machines, dividing the time on each side as nearly equally as possible. If during a given shift three punchers were on duty on three machines but only one telegrapher, it would not be possible to alternate the time between punching and receiving on anything approaching an equal basis.

The next difficulty is the letter from the carrier's representative, Mr. Beach, to the employes dated January 21, 1935, shortly after the employes had first raised the question whether Rule 20 (i) had not been abrogated by the Agreement of September 5, 1929. In this letter Mr. Beach said in substance that as a result of the carrier's having invoked its "prerogative" to alternate the telegraphers and punchers, the employes had sought the Agreement of September 5, 1929 for the purpose of eliminating the practice by doing away with Rule 20 (i), under which the practice was perfectly proper. This letter seems to take the view that Rule 20 (i) required two men per machine and implies that that practice was discontinued only after the Agreement of September 5, 1929. But, as we have already stated, the Memorandum of Understanding of September 5, 1929 seems to indicate that there had not been two men per machine, at least as of March 29, 1929. Mr. Beach's letter proceeds further upon the view that the September 5, 1929 Agreement by doing away with Rule 20 (i) effected a discontinuance of alternating. Now it is true that under the Agreement of September 5, 1929 certain telegraphers who had not been able to qualify as punchers and who were to be put back on the machines were relieved of the duty of so qualifying and therefore could not be alternated. But the Agreement provided that in filling new positions or vacancies applicants would be required to meet the puncher requirements; that telegraphers should receive one rate of pay when used on the receiving side and another rate of pay when used as punchers; and that punchers should be paid a certain rate when used on either the punching or receiving side. While the Agreement did not expressly sanction alternating, did not the provisions just mentioned seem to indicate that alternating was to be permitted in the case of applicants filling new positions or vacancies? But Mr. Beach indicated in his letter that the Agreement effected a discontinuance of alternating; did he mean just with respect to the older men who had not been able to qualify, in which case the employes would have given up Rule 20 (i) in order to restore a few men to their former positions? Or did he mean that all alternating was terminated by the Agreement, in which case what would be the point of the provisions noted above requiring new applicants to be qualified on both sides of the printer machines?

If, as Mr. Beach's letter seems to imply, two men per machine had been assigned prior to the abrogation of Rule 20 (i) by the Agreement of September 5, 1929, that Agreement presumably would have resulted in a reduction of force. Was any reduction effected? On this question of fact the record is silent. It is true that Mr. Beach cited (without specifying any date) the removal under the Memorandum of Understanding of September 5, 1929 of Telegrapher Willison, who was required to vacate "because of his inability to punch." His removal, according to Mr. Beach, was accomplished under the provisions of the Memorandum of Understanding "that in reducing printer forces the highest numbered position will be reduced first, except that in event two employes carry same position number the senior qualified employe will be retained" (underscoring by Mr. Beach). If Mr.

Willison was removed because of inability to punch, he must have been either one of the older telegraphers restored by the Agreement of September 5, 1929, in which case the Agreement provided that he would not have to meet the puncher requirements, or else he should under the agreement have been qualified to meet the puncher requirements. Was he then removed after a trial for having failed to meet this qualification; if so, what significance would his removal have in interpreting the Agreement of September 5, 1929?

The final document to which we wish to draw attention is the Mediation Agreement of June 9, 1933, interpreting the last two sentences of the Memorandum of Understanding dated September 5, 1929. This agreement provided in substance that "extra unassigned work which is confined to the receiving side of the duplex and/or multiplex automatic tape printer machine should be awarded to a qualified extra Morse telegrapher . . ."; that "extra unassigned work on the transmitting (puncher) side of the duplex and/or multiplex automatic tape printer machine should be awarded to an extra qualified puncher"; and that "extra unassigned work which requires a combination of work on both receiving and transmitting sides of duplex and/or multiplex automatic tape printer machines should be assigned to an extra Morse telegrapher who is qualified to punch. . . ." The carrier in its submission said that "there would be no occasion" for the clause last quoted "if it was the intention to use two employes on each machine." In other words, the carrier seems to construe this clause as showing that here and there must have been a machine with only one employe assigned to it who would be required to operate it first on the transmitting side and then on the receiving side. But would not this practice constitute alternating, which according to Mr. Beach, was done away with as a result of the Agreement of September 5, 1929? Or should we conclude that what Mr. Beach meant by alternating was simply the practice of requiring two employes periodically to change places with one another on the receiving and transmitting side, and that assignment of one employe to the work of first sending and then receiving did not constitute alternating within the meaning of the dispute which had given rise to the Agreement of September 5, 1929? And that the purpose of the September 5, 1929 Agreement in requiring applicants for new positions or vacancies to be qualified as punchers was not to facilitate alternating as between two employes but to permit the alternating of one employe on a given machine? If this question is answered in the affirmative, it is difficult to see what the employes gained by the Agreement of September 5, 1929 in exchange for allegedly giving up Rule 20 (i)—except merely the restoration of a few employes to their old positions.

We shall now recapitulate and set forth, in "Schedule A" below, the principal questions raised above to which answers (in so far as possible to be determined by a joint check) are desired.

SCHEDULE A

1. What duplex or multiplex automatic tape printing machines were in operation at the General Telegraph Offices on March 29, 1929?
2. With respect to each shift at these Offices, what assignments of telegraphers and punchers to the several machines prevailed on March 29, 1929?
3. Did any reduction of force result from the Agreement of September 5, 1929, and, if so, when and why and of what sort?
4. How does the carrier reconcile the statement in its submission to this Board that "at no time either prior to or subsequent to the execution of the Agreement of September 1, 1927 was an individual employe assigned to or employed on a particularly designated individual machine," with the language hereinbefore quoted (a) in its instructions of March 29, 1929 with reference to alternating employes on an approximately equal basis, and (b) in its submis-

sion to the Telegraphers Adjustment Board with respect to the assignment of "each one telegrapher and printer to the machine," etc.?

5. Does the carrier affirm Mr. Beach's apparent interpretation of the Agreement of September 5, 1929 that the employees gave up Rule 20 (i) in exchange for the carrier's giving up the right to alternate?
6. If (as the carrier interprets the Mediation Agreement of June 9, 1933 as showing) it was permissible under the Agreement of September 5, 1929 to assign one man to a machine and have him do first punching and then receiving or vice versa, what did the employees gain in exchange for giving up the requirements of Rule 20 (i)?
7. Did the practice of alternating in fact cease after the Agreement of September 5, 1929 was made, and if so in what respect?
8. What was the purpose, in said Agreement, of requiring future successful applicants to be qualified to punch?

II. Teletypes

The Agreement of January 11, 1930 refers throughout to the **transmitting** side of teletypes, and provides that "an employe" shall be assigned to that side of the machine. Nothing is said about the **receiving** side. The employees have asserted that this was because the only dispute related to the handling of the transmitting work, and that it was not necessary to cover the receiving side because it was clear that Rule 20 (i) covered that. In other words, the teletype Agreement specified who should do the work of the "puncher" mentioned in Rule 20 (i), namely a teletype clerk; and the balance of Rule 20 (i), with reference to a telegrapher on the receiving side, continued to apply.

However, from the employees' letter to the carrier of April 12, 1929, it would seem that the dispute related to the whole question of manning the teletypes, and not just to the question of manning the transmitting side; and the language of the submissions of both parties to the Telegraphers Adjustment Board, shortly prior to the making of the Agreement, seems to indicate the same thing.

But then why the limitation of the Agreement to the "transmitting side"? What provisions obtained, and what arrangements were actually made thereafter, with respect to the receiving side? (These two questions will hereafter be referred to as "Schedule B.")

The record is wholly insufficient to enable these two questions to be answered, and we deem more specific information necessary to guide us in reaching a final decision.

III. Conclusions

1. With respect to "duplex or multiplex automatic tape printer machines" within the meaning of the Agreement of September 5, 1929, we request the additional data set forth in Schedule A above.
2. With respect to teletypes, we request the additional data set forth in Schedule B above.
3. If the employees' claim embraces any machines other than those referred to in the two preceding paragraphs (as the record at certain points indicates may be the case), specific descriptions of them should be furnished in sufficient detail to enable this Board to determine first, whether or not they are "automatic printers" within the meaning of Rule 20 (i), and secondly, whether or not they fall under and are governed by the Agreement of September 5, 1929 (or the Teletype Agreement).

4. The parties should confer as promptly as possible and endeavor to submit jointly, through joint checks or otherwise, as much of the requested information as they can agree upon. To the extent that they cannot agree, and wish to submit information separately, the separate submissions should be received within sixty days of this order.

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, pending the receipt of further information specified above, findings cannot finally be made regarding the alleged violation of Rule 20 (i).

AWARD

Case remanded, to be disposed of in accordance with the directions contained above under the heading of "III. Conclusions."

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of December, 1941.