

Award No. 3051

Docket No. TE-3022

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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, Pacific Lines:

1. That the action of the carrier in handling through westbound telegraph business originating on the Union Pacific Railroad, destined to points on the Southern Pacific, Pacific Lines, by the use of perforated tape made by Union Pacific employes, which action resulted in the discontinuance of a position of telegrapher in 'R0' office, Ogden, on the Southern Pacific, is violative of the Telegraphers' Agreement, and

2. That effective ten days from November 25, 1939, the senior unassigned qualified employe on the Salt Lake Division available for duty but not used because of the complained of practice set forth in paragraph 1 of this claim, shall be compensated at the rate of pay applicable to a position of the classification necessary to handle the westbound telegraph business by means of automatic machine, until such time as a position is created and filled under the terms of the agreement in effect.

STATEMENT OF FACTS: 1. There is an agreement in effect between the parties to this dispute and a copy is on file with this Board.

2. Claim is prosecuted under Rules 1 and 2 of the agreement which we quote for ready reference:

"RULE 1.

Scope

This schedule will govern the employment and compensation of the following: Agents, assistant agents and ticket agents incorporated in wage schedule, agent-telegraphers, agent-telephoners, agents, small non-telegraph; block operators, car distributors (if required to telegraph in the performance of their duties), drawbridge tenders (levermen), managers, punchers, staffmen, telegraphers, telephone operators (except switchboard operators), towerman, tower and train directors and wire chiefs, and will supersede all previous schedules, agreements and rulings thereon. In application of these rules, employes covered thereby will be considered as telegraphers."

"RULE 2.

**Classification of Employes,
New Positions, Etc.**

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

The carrier desires to point out that even though the installation of the automatic tape reperforator machine in February, 1933, did result in the abolishment of a position or positions covered by the agreement in the Ogden telegraph office, such fact would not in any way present a basis for a claim.

- (3) That such action was in violation of the agreement.

The agreement is free of any provision that would in any manner support the claim involved in this docket.

The statement of claim in this docket is free of any allegation as to the rule or rules of the agreement relied upon; however, during the handling of the claim on the property the only agreement provision that the petitioner offered in support of the claim was Rule 1 (the scope rule). The Division's attention is directed to the fact that nothing contained in the scope rule defines the work that is covered by the agreement and likewise nothing contained therein that supports the claim in this docket. Said rule merely sets forth the classifications of employees that are covered by said agreement.

In the instant case the installation of the automatic tape reperforator machine in February, 1933, did not have the effect of removing work from the employees covered by the agreement in the carrier's Ogden telegraph office, but merely resulted in the work being performed in a different manner than it had been performed prior thereto. As pointed out previously, even though the installation of the automatic reperforator machine in February, 1933, had the result, which it did not, of reducing the force in the carrier's Ogden telegraph office, no basis for a claim would exist under the agreement.

For the Division's information the petitioner and the carrier entered into a new agreement, effective December 1, 1944, a copy of which is on file with this Board, which is at this time the current agreement. Nothing contained in said agreement could in any way be construed as supporting the claim involved in this docket; on the contrary the December 1, 1944 agreement, like the September 1, 1927, agreement, in fact supports the carrier's position in this docket.

CONCLUSION

The carrier submits:

(1) That the petitioner's handling of the claim in this docket was such as to preclude consideration at this time by the Division of said claim and therefore, should be dismissed.

(2) That in the event the Division does not grant carrier's motion to dismiss and considers the claim involved in this docket on its merits, it should find:

(a) that the carrier's action in installing the automatic tape reperforator machine in February, 1933, was in no way prohibited by the agreement;

(b) that said action did not result in the abolishment of any position or positions in the Ogden telegraph office,

and, therefore, in view of the foregoing, the claim is without basis or merit and should be denied.

OPINION OF BOARD: This claim is based on the contention that the Carrier by installing a reperforator machine in its Ogden, Utah, Telegraph Office removed work from the scope of the Telegraphers' Agreement and deprived the employees under the Agreement of work to which they were entitled.

The record discloses that prior to February, 1933, relay westbound messages from the Union Pacific Railroad to the Southern Pacific were received in tape form on the Union Pacific automatic printer machine at

Ogden and, after verification, the tape was turned over to the Southern Pacific Telegraph Office where it was repunched for transmission to destination on the Carrier's lines. During February, 1933, the Carrier installed a reperforator machine which could be connected to the Union Pacific's receiving circuit. By this means, messages originating on the Union Pacific were reproduced simultaneously on the Union Pacific receiving machine and the Southern Pacific perforator machine on another tape. The messages were then transmitted by running this perforated tape through Carrier's automatic printer machine. Claimant contends that this constitutes a removal of work from the scope of the Agreement and a "farming out" of the work to the employees of the Union Pacific Railroad.

There is no merit in the contention advanced by the Organization. No additional work was cast upon the employees of the Union Pacific. The transmission from the Union Pacific's Omaha Office was merely simultaneously reproduced in the offices of both carriers at Ogden. The installation and use of the reperforator machine by the Carrier and the reduction of the work as a result thereof is not a taking of work from the scope of the Agreement within the meaning of the awards cited by the Organization. The installation of labor saving machines and devices cannot be construed as taking work from the scope of the Agreement. No work was "farmed out" within the meaning attached to those words as they are used in our previous awards, no additional work being done by the employees on the road where the message originated. This holding makes it unnecessary for us to pass on other issues raised by the Carrier. No basis for an affirmative award exists.

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 parties waived oral hearing hereon;

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 no basis exists for the granting of an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 20th day of December, 1945.