

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Edward F. Carter, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE DELAWARE, LACKAWANNA & WESTERN RAILROAD  
COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad Company that

a) the Carrier violated and continues to violate Rule 1 (Scope), Rule 12-(a) (Classification of Employees) and Rule 16-(c) (Seniority and Promotion) of the Telegraphers' Agreement when on March 1, 1945 and subsequently, it declined and continues to decline to advertise to employees covered by the said telegraphers' agreement the three (3) telephone operator positions established at Transportation Desk, New York, March 1, 1945;

b) the Carrier shall now advertise said three telephone-operator positions, with rates of pay in accordance with the provisions of Rule 12-(c) of said telegraphers' agreement; and,

c) the employees who are assigned to the positions as a result of Items (a) and (b) of this claim shall be paid the difference, if any, between what they would have earned had they occupied said positions March 11, 1945, to the date actually placed thereon and what they have earned on other positions occupied during that period of time, plus the allowances enumerated in Rule 15-(a) of said telegraphers' agreement.

**EMPLOYEES' STATEMENT OF FACTS:** An agreement, herein referred to as the telegraphers' agreement, by and between the parties bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Effective 12:01 A. M., March 1, 1945, the Carrier established three 7-day-week positions at Transportation Desk, 140 Cedar Street, New York, N. Y., for the purpose of maintaining a skeleton train sheet covering freight and passenger train operations and movements; said train sheets to reflect trains, symbols, engine numbers, number of cars in train, loads and empties including number of perishables, and live stock, tonnage, delays and reasons therefor, whether or not proper connections are made, and train arrivals at and departures from principal terminals. The incumbents of the three telephone operator positions (not now classified as such by the Carrier) generally and regularly secure by telephone from various locations on the Carrier's lines the information necessary to maintain said skeleton train sheets.

6. The positions are properly classified and designated as Transportation Clerks and can not under any stretch of the imagination be considered as telephone operators. Claim was never presented on the Property by the ORT that Transportation Clerks were "Telephone Operators" within the scope of the ORT Agreement, but rather claim was made that non-schedule employees are performing work within the scope of their agreement.

7. The BR & SC Organization should be given an opportunity to be heard by this Board before any decision is rendered in this case.

8. Traditionally, practically, factually and contractually the work belongs to the clerks.

"We think the correct rule is that the clerks' agreement reserves all work usually and traditionally performed by this class of employees."

#### Award 3003—Third Division

Exhibits not reproduced.

**OPINION OF BOARD:** On March 1, 1945, Carrier established three 7-day a week positions around the clock at the Transportation Desk, 140 Cedar Street, New York City. It is the contention of the Telegraphers' Organization that these positions should have been assigned to employees within its craft rather than to employees under the Clerks' Agreement.

The record shows that the primary duty of these positions was to compile train sheets and situation reports. In doing this work it was necessary to gather information from various points on the railroad system concerning the movements and operations of trains, weather conditions and other pertinent matters. The telephone is used chiefly in gathering the information and using the telephone constitutes most of the work of the position. The information is entered on various blank forms and is thereby made a matter of record.

The scope rule of the applicable Telegraphers' Agreement, insofar as it affects the present case, provides that the agreement applies to all telephone operators except switchboard operators. Rule 1, Agreement, 1940. While our previous decisions hold that the use of the telephone in the transmission or reception of messages, orders, or reports of record is the work of the telegraphers, it is not the only work included within the Telegraphers' Agreement. In addition to telegraphers' work as traditionally defined, it includes, of course, all classifications of employees specifically negotiated therein whatever the nature of their work may be. Consequently, an employee who spends the greater portion of his time in gathering information by telephone to be made a matter of record, is ordinarily within the scope of the Telegraphers' Agreement.

Unless this be so, the provision of the scope rule which includes telephone operators except switchboard operators is rendered entirely meaningless. Under the record before us, these employees spend most of their time in securing information by telephone.

Information secured from telegraph operators is less than one hour on each shift. The balance is acquired by using the telephone. There is some clerical work connected with it, but not more than an operator would perform if it was received by telegraph. We think the amount of telephoning on these positions and the nature of the information sought constitutes these positions as telephone operators as shown in the scope rule of the Telegraphers' Agreement.

**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 the Agreement was violated as charged.

**AWARD**

Claims (a), (b) and (c) sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST: H. A. Johnson**  
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1948.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

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**INTERPRETATION NO. 1 TO AWARD NO. 3902**  
**DOCKET TE-3581**

**NAME OF ORGANIZATION:** The Order of Railroad Telegraphers.

**NAME OF CARRIER:** The Delaware, Lackawanna & Western Railroad Company.

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The request for the interpretation of Award 3902 arises out of a situation existing after the claim, upon which the award is based, had been appealed to this Board. The award was handed down on May 19, 1948. Carrier first received notice of it on May 24, 1948. On May 25, 1948, the Carrier bulletined a teletype-clerk-operator position and indicated its intention to abolish the positions involved in the award as of June 1, 1948. The right to abolish the positions is conceded by the Organization. The present dispute arises from the fact that the award assumes the continuance of the positions in disposing of the issue then before the Board. The Organization contends that the Carrier should be required to bulletin the positions even though they are no longer in existence for the purpose of determining the employees who were wrongfully deprived of the work and, consequently, to whom reparations are owing.

We are not in accord with the Organization that the Carrier should be required to bulletin these positions. The positions having been properly abolished, there is no proper basis to advertise them. From the standpoint of the Carrier it would be a vain thing for it to advertise a nonexistent position.

The burden is upon the Organization to show that qualified employees, not exceeding three, under the Telegraphers' Agreement have suffered loss as a result of Carrier's failure to properly apply the rules. If this be done, Carrier is obliged to pay the losses sustained by them. The fact that they may not be the persons primarily entitled to the positions is not a controlling factor insofar as the Carrier is concerned. It need not pay but once.

While the Carrier can abolish a position at any time when the duties of the position cease to exist or when they have been properly assigned to another within the scope of the applicable Agreement, such abolition does not have the effect of nullifying an award based on an improper application of the rules prior thereto. The Carrier is still required to reimburse those employees who suffered loss because of its wrongful application of the rules. It is the claimant, however, and not the Carrier, who must assume the burden of showing the loss and the employees who suffered it. Upon the establishment of such facts the Carrier is obliged by Award 3902 to make compensa-

tion for the loss sustained over the period that the positions in question existed to the persons so shown to be entitled thereto.

Referee Edward F. Carter, who sat with the Division as a Member when Award No. 3902 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 21st day of January, 1949.