

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Lines in Texas and Louisiana,

(a) That the Carrier violated the prevailing telegraphers' agreement dated October 15, 1940, particularly the Scope Rule and Rule 24 (a) thereof, and also violated the provisions of the Memorandum of Understanding between the parties to this dispute dated April 22, 1941, when on February 23, 1948, the Carrier, acting alone, reclassified the position of star (*) agent at Anchorage, La., to agent-telegrapher, and removed from the agreement and from said agent all of the clerical work formerly performed by him and assigned all of said clerical work to a newly created position of cashier not under the telegraphers' agreement.

(b) That the Carrier violated the terms of the prevailing telegraphers' agreement when, acting alone, it discontinued the position of first trick telegrapher-clerk at Anchorage, La., and assigned all of the work of the position to the improperly reclassified position of agent-telegrapher.

(c) That the position of star (6) agent and the position of first trick telegrapher-clerk at Anchorage shall be restored to the telegraphers' agreement and all employees adversely affected by these violative acts of the Carrier shall be restored to their former positions and be reimbursed for the difference between what they have earned and their full compensation lost, and in addition they shall be paid for any expenses incurred by reason of the Carrier's Acts recited above.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date October 15, 1940, as to rates of pay and rules of working conditions, and a Memorandum of Understanding on same, dated April 22, 1941, is in effect between the parties to this dispute.

Prior to February 23, 1948, the Carrier maintained four positions at Anchorage covered by the telegraphers' agreement, as noted:

Star (*) agent	No assigned hours
1st trick telegrapher-clerk.....	8:00 A. M. to 4:00 P. M.
2nd trick telegrapher-clerk.....	4:00 P. M. to 12 Midnight
3rd trick telegrapher-clerk.....	12 Midnight to 8:00 A. M.

In addition to the above listed employees there were employed at Anchorage three yard clerks and one porter not covered by the telegraphers' agree-

Memorandum of Understanding with the Telegraphers' Organization dated April 22, 1941 were in effect. Notwithstanding this fact, the Telegraphers' Organization, as a result of the Carriers' application of the Memorandum Agreement of November 1, 1940, now in paragraph (a) of their Statement of Claim allege a violation of the Scope Rule and Rule 24 (a) of their current working agreement, also the Memorandum of Understanding of April 22, 1941. Aside from the inconsistency of these allegations in view of the circumstances related above, the Carrier has discussed separately and in detail each of those allegations and conclusively shown the absence of any basis in fact for the alleged violations of any rules or the Memorandum of Understanding. Rule 24 (a) not only contemplates but specifically provides for the reclassification of positions, and the action of the Carrier in this instance was in accordance with that rule. So far as the removal of clerical work from the agent is concerned, this was inevitable in the application of the Memorandum Agreement of November 1, 1940 at Anchorage.

3. In paragraph (b) of their Statement of Claim the Employees protest discontinuance of the position of first trick telegrapher. Under the circumstances this action was not only logical but inevitable as a result of application of the Memorandum Agreement. The Carrier has hereinabove cited several rules of the Telegraphers' Agreement, all of which contemplate and specifically provide for reductions in force and abolishment of positions. Therefore, there was nothing irregular in this action of the Carrier. It has always been the practice, as well as the undisputed prerogative and responsibility of management to do this under circumstances such as existing in this case where the position was not necessary in the conduct of the Carrier's business. In this connection attention is directed to Award No. 654 (ORT vs. ICRR) which denied a similar contention and claim of the Telegraphers' Organization.

4. In paragraph (c) of their Statement of Claim the Employees imply that the position of star (*) agent and the position of first trick telegrapher were removed from the scope of the Telegraphers' Agreement. The Carrier has shown this to be not a fact. The agency at Anchorage continues to be classified as a star (*) agency and paid the same monthly rate as prior to February 23, 1948, the effective date of application of the Memorandum Agreement of November 1, 1940. While the position of first trick telegrapher was discontinued, the position was not removed from the scope of the Telegraphers' Agreement. If and when it should be restored it would of course come within the scope of the Telegraphers' Agreement. The work of that position still remains and is performed by the agent-telegrapher, which position is covered by the Telegraphers' Agreement.

5. Also in paragraph (c) of their Statement of Claim the Employees make the request that "all employees adversely affected by these violative acts of the Carrier shall be restored to their former positions and reimbursed for the difference between what they have earned and their full compensation lost * * *." Since the Carrier has shown that it committed no "violative acts" in its handling of the situation at Anchorage, there is, of course, no basis in fact for this request and it should accordingly be denied.

In its consideration of this case attention of the Board is also directed to Awards Nos. 3932, 3933 and 3934 (BRC vs. MKT RR) which cover situations similar to those in the several awards rendered by your Board on this property. As a matter of fact, in the third paragraph of "Opinion of Board" on page 44 of Award 3932 reference is made to the court proceedings on this property referred to in the above Historical Matter in this case. In Awards 3932, 3933 and 3934 the position of the Clerks' Organization was again sustained by your Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier formerly maintained four positions at Anchorage, La., under the Telegraphers' Agreement, to wit: A star (*) agent and first, second and third trick telegrapher-clerks, in addition to other employees outside the Agreement. More than six hours daily of the time of the star (*) agent was employed in clerical work and the balance in general supervision of the station force. On February 23, 1948, Carrier discontinued the

position of first trick telegrapher, reclassified the star (*) agent as agent-telegrapher, assigned to him the duties of the discontinued position, and assigned the clerical work formerly performed by the star (*) agent to a newly created position of cashier. The net result of this change was that with slight rearrangement of work, the position formerly occupied by an employee under the Telegraphers' Agreement was abolished and its work assigned to a newly created position outside the Agreement. In brief, the contentions of the committee are that in practical effect the changes abolished the position of star (*) agent; that this was a negotiated position and could not arbitrarily be abolished; that the clerical work involved in that position had been performed by an employee under the Telegraphers' Agreement and recognized as properly belonging to that position for many years, and that so long as such work existed the position could not arbitrarily be abolished and the work belonging to the position assigned to some other position outside the Agreement. Employees also rely upon a Memorandum of Understanding of April 22, 1941, which is set out in the submissions.

It is admitted by both parties that the reason for the change here complained of was not any change in the amount or nature of work required, but rather Awards Nos. 2253 and 2254 of this Division, which Carrier considered as requiring it to assign the clerical work involved to an employee under the Clerks' Agreement.

It has been established by many awards of this Division that clerical work primarily belongs to employees under the Clerks' Agreement, but it is equally well established that since clerical work is necessarily interwoven in greater or less degree with the work of many other crafts, such incidental and associated clerical work may properly be assigned to such crafts in connection with their regular work. This is particularly applicable to telegraphers, and where clerical work is incidental to telegraphers' work or where it is in proximity thereto, it has been held that a telegrapher may perform clerical work to such extent as to fill out the telegraphic assignment. It is also well established that in case of the increase of such clerical work performed by those under the Telegraphers' Agreement so as to require an additional employee, then the clerical work which may properly be separated must be assigned to an employee under the Clerks' Agreement, and that in case of decrease of the work so that such additional employee is unnecessary then the clerical work may be returned to the telegrapher. These rulings are well summed up by Referee Wenke in Award No. 4559.

Here we have involved the question whether in the absence of any decrease of work to permit reduction of force, a Carrier may, by slight shift of the duties involved, arbitrarily abolish a position existing for many years under the Telegraphers' Agreement, and create a new position under the Clerks' Agreement to take over its work.

While it is true there is nothing in the Scope Rule to indicate inclusion of cashioner's work or other clerical work therein, yet it is undisputed that by custom and long recognition of right, such work has here been performed by the star (*) agent for many years, and the arbitrary removal of such work and the position from under the Agreement wipes out seniority rights of long standing and undermines the security of employees. As said by the Circuit Court of Appeals in a similar situation, in *Hunter vs. A. T. & S. F. Ry. Co.*, 171 F. (2d) 594, "If long custom and practice means anything, and we think it does, they had a claim on the disputed work superior to the brakeman or any other class."

Furthermore, even if it is admitted that the assignment of clerical work to the telegrapher was discretionary with the Carrier, here the work was taken away from under the Telegraphers' Agreement not at the discretion of the Carrier, but over the vigorous protest and objection of the Carrier by order of this Division at the behest of a third party,—the Clerks' Organization.

If we look for guidance to prior awards, it is declared in Award No. 751, where the office of general clerk was abolished, with part of the duties assigned to the excepted chief clerk and agent and the balance to a lower rated clerk,

that, when the general clerk's position was established, "it and its work automatically became subject to the agreement and, the work subsisting, they could be removed therefrom only by agreement of the parties." In Award No. 3606, where the position of ticket agent-telegrapher was listed among the several positions under the heading "wage scale," and due to difficulty in handling finances and friction with other employes, a cashier outside the Agreement was required to pick up the cash receipts formerly handled by the ticket agent-telegrapher while the supervisory duties formerly handled by him were transferred to a freight agent, it was said, although the claimant continued to work under the same title and at the same salary, that "when the position was negotiated into the agreement not only the position but the work attached thereto was subject to the agreement. This Board has consistently held that the carrier may not arbitrarily take work from under the scope of the agreement." Again, in Award No. 3901, where the Carrier abolished the position of assistant agent, which was under the Telegraphers' Agreement, assigning part of the work to the agent, who was outside the Agreement, and the balance to ticket clerks who were under the Clerks' Agreement, it was said, "In any event, arbitrary shifting of work from the employes of one agreement to those of another, other than by negotiation, constitutes a violation of the controlling agreement." There, as here, the telegraphers were objecting to the assignment to employes under the Clerks' Agreement of clerical work formerly performed by the telegraphers, and their claim was sustained.

Involved in this claim we have not only the traditional and generally recognized right of those under the Telegraphers' Agreement to perform clerical duties, but a specific Agreement between the Carrier and the Organization, the Memorandum of Understanding of April 22, 1941, which reads as follows:

"(a) It is agreed that any or all clerical or other work necessary in meeting the service requirements of their positions or in the conduct of their offices by Agents or Assistant Agents, occupying positions covered by the Telegraphers' Agreement, will be considered as coming within the scope and subject to the provisions of the Telegraphers' Agreement.

"(b) It is further understood and agreed that clerical or other work under the supervision of an Agent or Assistant Agent will be considered as coming within the scope of the Telegraphers' Agreement and subject to assignment to employes covered by the Telegraphers' Agreement regardless of time consumed provided the service requirements also involve work in connection with communication service."

As we interpret this Memorandum, it in no way limits, but rather affirms the traditional right of employes under the Telegraphers' Agreement to do clerical work. In paragraph (b), the right to clerical work by one under supervision of an Agent, such as a telegrapher, is conditional upon his being required to do communication work, also; but under paragraph (a), the right of the Agent to perform clerical work is not so conditioned. He is not required to do communication work. As Agent he has other duties, and, in addition to such duties, it is agreed that he may do clerical work. His right is not restricted to clerical work necessary to his position, but extends to all work necessary in the conduct of his office. That term is, we think, inclusive of the work here performed by the star (*) agent, and subject only to the limitations noted in Award 4288.

It is urged by the Carrier that there is no ground for complaint here for the reason that the star (*) agent was able to claim another position without loss of salary. However, the fact that by virtue of the agent's seniority and his right of displacement, it was some other employe under the Agreement, rather than the agent himself, who was ultimately deprived of a position, makes the loss to the Organization no less real and its protest no less valid. For the reasons above stated, we feel compelled to hold that the Carrier violated the Telegraphers' Agreement. Since there is no proper evidence as to expenses incurred, claim therefor should be denied.

In our conclusion as to the present claim, we are not without cognizance of the situation in which the Carrier finds itself in view of the award on the claim of the Clerks' committee, but relief therefrom does not appear to lie within the jurisdiction of this Board. (See Awards Nos. 3526 and 4580.)

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.

AWARD

Claims (a) and (b) sustained. Claim (c) sustained except as to expenses, if any.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of February, 1950.