

Award No. 5318
Docket No. TE-5249

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven & Hartford Railroad Company:

(1) that the Carrier discontinued the position of Censor in the "NH" New Haven, Conn., telegraph office on December 15, 1948, in violation of the Telegraphers' Agreement, when in fact, the duties of the position were not abolished, and transferred all of those duties, to an employee not covered by the Telegraphers' Agreement; and

(2) that the regularly assigned incumbent of the position of Censor shall be restored to his former position and be reimbursed for all wage loss suffered by reason of his improper removal retroactive to December 15, 1948; and that the employee who was resultantly displaced by this improper action of the Carrier shall also be restored to his former position and reimbursed for any wage loss suffered thereby.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of June 15, 1947, as to rules of working conditions and rates of pay is in effect between the parties to this dispute; copies thereof are on file with the National Railroad Adjustment Board.

At Page 38 of said Agreement, there are listed the following positions under the heading of General Office at New Haven:

New Haven Office.....Operators	12.....	\$ 1.215
New Haven Office.....Censor	1.....	288.25*.

The rates shown here were subsequently increased by the amounts involved in national wage increases.

Prior to December 15, 1948, E. M. Sullivan held the position designated as "censor" in the "NH" New Haven Telegraph Office, the duties of which were that of manager in that telegraph office.

On November 29, 1948, the commercial traffic engineer—Communications Department—published the following notice:

The history of this position from December 1, 1919, is given below:

- (1) December 1, 1919—Position of Manager established,
- (2) August 16, 1925—Title changed to Telegraph Wire Chief,
- (3) August 1, 1930—Telegraph Wire Chief's position abolished, and supervision was assigned to certain clerical employees of the General Superintendent's office of the ET&C Department,
- (4) May 1, 1931—Position of Censor established,
- (5) September 21, 1934—Censor's position abolished and supervision again assigned to clerical employees in General Superintendent's office of the ET&C Department,
- (6) July 16, 1941—Censor's position reestablished, and
- (7) August 16, 1942—Mr. E. M. Sullivan appointed to position of Censor and covered it until it was discontinued on December 15, 1948.

The duties of the Censor's position consisted of the following:

- General supervision of "NH" office,
- Investigating complaints in connection with telegrams,
- Calling spare men when required,
- Preparation of requisitions, and
- Regular telegrapher's work i.e., transmitting and receiving messages by Morse code, telephone, and printer.

The monthly salary of the Censor's position was listed in the Wage Scale on page 38 of the New Haven Telegraphers' Agreement dated and effective June 15, 1947. The position did not appear in any earlier agreement, and it was omitted from the next subsequent agreement effective September 1, 1949, which is now in effect. Copies of the 1947 and 1949 agreements are on file with this Board and are incorporated herein by reference.

POSITION OF CARRIER: Article 1, entitled "Scope" of the 1947 agreement lists the positions which are subject to the terms of the agreement. The position of Censor is not there listed. As previously stated this job appeared only in the Wage Scale appended to the agreement. So long as the position was continued the carrier was undoubtedly bound to pay the salary there specified. But unless and until the position was listed in the scope note of the agreement all the duties of the job did not become recognized telegraphers' work.

It has never been a requirement that the Censor be a qualified telegrapher, which is borne out by the fact that during the periods when this position was not in existence clerks from the general office supervised "NH" office.

To the extent that the Censor performed the duties of a telegrapher, as listed in the scope note of the agreement, these duties were transferred to the regularly employed men of that class in "NH" office. The carrier thus fully complied with the requirements of the 1947 agreement.

As stated the Telegraphers' Agreement was revised effective September 1, 1949, and the position of Censor was not included in the Wage scale. This being so even were there a violation in originally discontinuing the position, it was written out of the contract effective September 1, 1949.

The claim should be denied because the carrier had the right to abolish the Censor's position as no bona fide telegrapher's work was transferred out from under the Telegraphers' Agreement.

OPINION OF BOARD: Petitioner alleged that although on or about December 15, 1948, Carrier abolished the position of Censor at the location

involved herein, in fact the work incident to said position continued to exist and that all duties of said position were assigned to an employe not covered by the Schedule.

By way of answer thereto Carrier averred only those duties which Petitioner did not have the exclusive right to perform were assigned to one outside the Schedule.

Assuming but not deciding that all of the duties of the position in question belonged to the Telegraphers' craft, it is well settled Respondent could have abolished the job and apportioned its duties among the remaining members of the craft without doing violence to the Schedule. Nor do we think the Schedule prohibits Carrier from abolishing a job when in fact it also discontinues the duties of said job.

The Schedule plainly states its purpose is to govern the working conditions and rates of pay in certain listed positions and attached to said Schedule is a wage scale list referring to the rate, job classification, and location. However, that does not mean if Carrier subsequent to the adoption of said Schedule establishes a job whose description falls within Telegraphers' duties but which is styled something not mentioned in the Schedule and is at a point not referred to therein it is not subject thereto.

The point then is may Carrier transfer to one not covered by the Schedule duties which Telegraphers do not have the exclusive right to perform? We think it may, *see Award 4992, Opinion by Referee Carter.*

Since we are finding the Schedule only governs that type of work which historically and traditionally belongs exclusively to Telegraphers we next ask, were the duties given to the outsider of such a nature? Petitioner averred those duties of which are indisputably Telegraphers and which Carrier styles as routine were infrequently performed by the Censor or Manager but that the supervisory duties, checking work of others, assigning circuits, arranging relief and rest days were the predominant duties.

As hereinabove pointed out the controlling point is not whether such duties were previously performed by a Telegrapher but rather does a Telegrapher have the exclusive right to perform them. The representative for Petitioner made an effective argument with reference to the theory upon which this claim is pleaded. However, he was not furnished with evidence to show the work other than routine work belonged to his craft alone. On that basis the Board may not find in the affirmative.

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;

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

Violation of the Schedule was not established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of April, 1951.