

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad Company that:

1. The Carrier has violated and continues to violate the provisions of the Agreement between the parties, when and because it declined, and continues to decline, to assign to employees covered by the said Agreement the duties of operating teletype and other mechanical machines used for transmitting and/or receiving communications of record; and
2. The Carrier shall be required to forthwith assign such operation to employees covered by the Agreement.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties, referred to herein as the Telegraphers' Agreement, bearing effective date of February 1, 1948, is in evidence; copies are on file with the National Railroad Adjustment Board.

Printing telegraph (teletype and/or printers) service is in operation on the Carrier's lines at:

Oak Island, 24 hours per day between the Hump Office and Retarder Towers. Consists of switching lists are transmitted between the locations.

No. 6 Broadway, New York City, 8 hours per day between that Location and Pier No. 1, Jersey City, New Jersey. The communications transmitted and received are certain billing information, train consists, such as car initials, car numbers, consignees, consignors, destinations, etc.

Packerton, 24 hours per day, between that location and Oak Island. The communications are consists of trains leaving Packerton.

Coxton, 24 hours per day, between Coxton Yard Office and Retarder Towers. Consists of switching lists are transmitted between the locations.

Manchester "UC", Manchester West Bound Yard, Tift Terminal Yard Office and Suspension Bridge Yard Office, 24 hours per day.

It has always been the understanding with the General Chairman on the property since January 1939, when the first inclusion under the scope rule of the Telegraphers' Agreement was extended to include "operators of mechanical telegraph machines" that where teletype machines are installed to take the place of the transmission of reports and messages formerly transmitted by telegraphers, that telegraphers would have jurisdiction over those jobs. On the other hand, where teletype machines are installed for the purpose of transmitting reports and messages previously transmitted by messengers or mail, that clerks would have jurisdiction over those jobs. It was on the basis of this same understanding that the scope rule of the Telegraphers' Agreement was negotiated in the manner which became effective July 1, 1940, as well as in the current agreement which became effective February 1, 1948.

The Carrier feels it would be an injustice to clerical employees to remove the work of operating teletype wholly in connection with clerks' duties from being performed by clerks, and giving this work to telegraphers to perform, in view of the past understandings on the property between the Carrier and the General Chairmen of both the Telegraphers' organization and the Clerks' organization, and more so in view of the fact that clerks have performed the work which is now in dispute for more than twenty years.

In a question of the kind here in dispute, the Carrier could not accede to the demand of the Telegraphers' organization without placing itself in jeopardy of a violation of the rules of its Clerks' Agreement. Therefore, the Carrier invites the attention of the Division to the fact that the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees has a direct and substantial interest in this case, and that it should, therefore, be made a party thereto. See Awards 2561, 3933, 2597, 3932 and 4735.

The Carrier respectfully submits for the reasons outlined, it is not in violation of the existing Telegraphers' Agreement for clerks to operate teletypes wholly in connection with Clerks' duties, as claimed in this case, and, accordingly, the claim as submitted should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: For all essential purposes the claim, the factual situation and the decisive principles involved in this case are the same as those involved in Award 5432, this day adopted. What is there said and held with respect to dismissal of the claim because of failure to give proper notice to all parties whose rights might be affected by the decision is decisive and controlling here. Therefore, based on what is said and held in the Opinion of Award 5432 we hold the instant claim should be dismissed without prejudice and it is so ordered.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 claim should be dismissed without prejudice as per Opinion.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 6th day of September, 1951.

DISSENT TO AWARD NO. 5433, DOCKET NO. TE-5442

We dissent.

A. R. Ferris,
Roger Sarchet,
G. Orndorff,
A. J. Cunningham,
J. H. Sylvester.