

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA AND SANTA FE RAILROAD
COMPANY (Eastern Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that:

1. The carrier violated the terms of the agreement between the parties when, on December 6, 1949, it unilaterally declared reclassified the position of Agent-Cashier at Florence, Kansas to Agent-Telegrapher and removed from the agreement, and from said Agent-Cashier, work formerly comprising his position and transferred such work to a newly created position of Cashier-Clerk outside of the Agreement.

2. The Carrier violated the terms of said agreement, when it unilaterally declared abolished the position of first trick telegrapher-clerk at Florence, Kansas, and assigned the work of this position to the reclassified position of agent-telegrapher and to employees not subject to the Telegraphers' Agreement.

3. The work comprising the position of agent-cashier, and of the first trick telegrapher-clerk at Florence, Kansas, shall be restored to the agreement, and to the employees subject thereto; the employees resultingly displaced shall be returned to their former positions, and all employees adversely affected shall be reimbursed in an amount equal to the amount of compensation lost by them, plus expenses incurred by reason of these violative acts.

EMPLOYEES' STATEMENT OF FACTS: An Agreement bearing effective date of December 1, 1938, by and between the parties and referred to herein as the Telegraphers' Schedule, is in evidence.

Prior to December 6, 1949 the Carrier maintained four positions at Florence, Kansas covered by the Telegraphers' Schedule as noted:

Agent-Cashier	8:00 A. M. to 5:00 P. M.
1st trick Telegrapher-Clerk	8:00 A. M. to 4:00 P. M.
2nd trick Telegrapher-Clerk	4:00 P. M. to 12:00 midnight
3rd trick Telegrapher-Clerk	12:00 midnight to 8:00 A.M.

In addition to the above listed employees there was assigned one yard clerk not covered by the Telegraphers' Schedule. His duties, prior to December 6, 1949, were as follows:

craft cannot be taken from that craft and assigned to an employee covered by another agreement."

but failed to cite the Awards to which they had reference.

The Carrier respectfully asserts that the handling complained of in the instant dispute was not violative of either the Scope rule or Article II of the Telegraphers' Agreement. The Carrier also has no knowledge of any awards of the Adjustment Board which would serve to support the Employees' claim in the instant dispute. It has repeatedly been held by the Third Division that the Scope Rule of an agreement does not cover work, but simply defines the type and class of employees covered by the agreement, and the language of the Scope Rule of the Telegraphers' Agreement here involved clearly supports that conclusion.

Article II-(a) simply provides that employees covered by the Telegraphers' Agreement will be classified in accordance with the duties or service performed, while Article II-(b) prescribes the manner in which the rates of pay of new positions shall be determined. There was no change in the classification of an employee covered by the Telegraphers' Agreement at Florence, Kansas in the instant dispute, and none was required under the terms of Article II-(a). A new telegraph service position was not established, hence Article II-(b) was likewise inapplicable and has no bearing whatever on the instant dispute. There is nothing in either the Scope Rule or Article II which prohibits or otherwise restricts the right of the Carrier to abolish a telegraph service position such as Telegrapher-Clerk Position No. 590 and reassign the work of that position to another telegraph service position such as the Agent-Telegrapher Position No. 580 at Florence. There is likewise nothing contained in those rules which, either by inference or otherwise, prohibits the Carrier from transferring clerical work from a telegraph service position to a clerical position subject to the Clerks' Agreement. As a matter of fact, the instant claim is the first occasion on which the complainant organization representatives have ever advanced a contention that the transfer of clerical work from a telegraph service position to a clerical position subject to the Clerks' Agreement was violative of the Telegraphers' Agreement, notwithstanding that identical transfers of clerical work have repeatedly occurred on this property throughout the years. The foregoing is likewise true with regard to the transfer of the duties and work of an abolished telegraph service position to another telegraph service position.

The Third Division has repeatedly held that, unless it can be shown that the claim involved in a dispute is supported by the agreement rules cited by the complainant organization, it must be denied. Such a showing cannot be made in the instant dispute, and the claim is entirely without support under the agreement rules relied upon to the Employees. As to the awards of the Adjustment Board which the organization representatives failed to identify in the handling of the instant dispute on the property, the respondent carrier is without knowledge of any awards which would serve to support the Employees' contention. The Board's attention is, however, respectfully directed to the fact that the duties or work which were transferred from the Agent-Telegrapher covered by the Telegraphers' Agreement to the occupant of the Cashier position covered by the Clerks' Agreement in the instant dispute **was clerical work, the performance of which is not and has never been a monopoly right of telegraph service employees covered by the Telegraphers' Agreement.**

All that is contained herein is either known or available to the employees or their representatives.

(Exhibit not reproduced.)

OPINION OF BOARD: Involved here is a claim arising out of an alleged violation of the presently effective Agreement, dated June 1, 1951. The complaint concerns the discontinuance or abolishment of the Telegrapher-Clerk, first trick position, and the re-assignment of the duties of this position to the position of Agent-Telegrapher and Cashier-Clerk.

The positions of both Agent-Telegrapher and Cashier-Clerk were reclassified, the former being under this Agreement and the latter under the Scope of the Agreement between the Respondent and the Brotherhood of Railway and Steamship Clerks.

It is argued that this Board is without authority to proceed on the merits here in the absence of a notice to the employe or employes covered by the last above named Agreement who possibly could be affected by a final determination of the issue presented.

There is no doubt that the position of Cashier-Clerk is not covered by the Telegraphers' Agreement.

This jurisdictional question has been passed on in earlier awards of this Division, 5432, 5433, 5599, 5600 and 5644. Therein it was determined that the Board was without power or authority to proceed or act on the merits of a claim, when it appeared that employes having rights that might be affected by a decision of this Board, were not served with notice of the existence of a claim, and given an opportunity to participate in the proceedings.

The above-mentioned awards all lay down the principle that notice under Section 3, First (j), of the Railway Labor Act is required.

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

For the reasons and on the basis stated here and in prior awards of this Board this claim is hereby dismissed without prejudice.

AWARD

That the claim is dismissed without prejudice in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of May, 1952.

DISSENT TO AWARD 5759, DOCKET TE-5767

We dissent.

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