

Award No. 6051
Docket No. TE-5827

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY
(South-Central District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (South-Central and Northwestern Districts) that:

(1) The Carrier violated and continues to violate the terms of the agreement between the parties, when effective September 1, 1949, it declared abolished the telegrapher-clerk position at Moapa, Nevada, and unilaterally removed a portion of the work of this position from the agreement and from the employees covered thereby, and transferred such work to employees not subject to said agreement;

(2) The Carrier shall forthwith restore to the agreement and to the employees holding rights under said agreement all of the work of said telegrapher-clerk position which has since September 1, 1949, been assigned to and performed by outside employees; and

(3) In consequence of such violation, the agent-telegrapher employed at Moapa shall be paid an amount equal to a call each day since September 1, 1949, that he has not been called out to perform the work in question.

EMPLOYEES' STATEMENT OF FACTS: Effective September 1, 1949 the second trick telegrapher-clerk position at Moapa, Nevada with assigned hours 2:30 P. M., to 10:30 P. M., was declared abolished by the Carrier. The duties of this telegrapher-clerk position consisted of (1) preparing waybills for outbound freight; (2) preparing abstract reports on outbound and inbound freight; (3) filing tariffs; (4) expensing incoming freight shipment waybills; (5) handling railroad messages and Western Union telegrams; (6) keeping Western Union accounts; (7) meeting train No. 37 and handling all head-end work such as U. S. Mail, baggage and express, on and off train; (8) keeping station in neat, orderly and sanitary condition (janitor work); (9) copying train orders for the local freight train operating on Mead Lake Branch of which Moapa is the junction point.

The branch line train usually leaves Mead Lake, the starting point of this branch line train, between 3:00 P. M., and 5:00 P. M., arriving at Moapa between 5:00 P. M., and 7:00 P. M., and continues through to Las Vegas, Nevada, the terminus point. It generally picks up from three to fifteen carloads of sand destined to Pacific Coast points. It was the regular work of

The waybills prepared at Moapa prior to September 1, 1949, were not prepared by the agent-telegrapher; they were prepared by the telegrapher-clerk. Upon the disappearance of all telegraphic service being performed by the latter position, it was discontinued, and for the reasons herein stated, the work was returned to the source from which it came. This work is not within the scope of the Telegraphers' Agreement, nor does its performance by a position classified within the rule to fill out his telegraphic assignment constitute an amendment to the scope rule to the extent that it may not be performed by any position not included therein. The claim is not, as the petitioner pretends, a request for the return of work to the scope of the telegraphers' agreement or to the position from which it was taken. Instead, it constitutes an effort to amend the scope rule of the agreement so as to require that the handling of waybills or the transcribing of information thereto be performed only by incumbents of positions listed in Rule 1. The claim contemplates that instead of such work being treated as incidental to the work of positions shown in Rule 1, as heretofore held by the Board in awards herein cited, it must be considered work reserved exclusively to such positions, the same as train orders. As heretofore stated, that cannot be done except by writing a new rule to so provide, and the Board is without authority to supply such a rule.

The Carrier has, therefore, shown and submits that it did not remove any work from the scope of the telegraphers' agreement or from the position of agent-telegrapher at Moapa.

The Carrier's regulations required under the existing circumstances that the work be performed at Las Vegas. Its assignment to clerical forces at that point is in conformity with the schedule rules and in harmony with the rulings of this Board. For these reasons, the claim should be denied, and the Carrier requests the Board to so hold.

All data submitted by the Carrier have been presented to petitioners and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is based on the abolishment of the telegrapher-clerk position, assigned hours 2:30 P. M.—10:30 P. M., at Moapa, Nevada, as of September 1, 1949, and removing a portion of the work of this position from the Agreement and from the employees covered thereby to other employees outside of the Agreement. The claims also asks that the work be restored to the Agreement and to the employees holding rights under the Agreement and for a call for each day since September 1, 1949, for the agent-telegrapher.

The Carrier raises a jurisdictional question, namely that the Clerks' Organization have rights under their contract which may be affected by our decision in this claim, since they are interested parties and under Section 3 First (j) of the Railway Labor Act are entitled to notice of this claim.

Section 3 First (j) of the Railway Labor Act provides:

"Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employees and the carrier or carriers involved in any dispute submitted to them."

This question has been decided by this Division in numerous awards, some claiming that the decisions of the Federal Courts do not state that notice must be given to third parties in every instant and that we have jurisdiction (Aw. 5702) same claiming that this Division does not have jurisdiction (Awards 5432, 5433, 5599, 5600) in line with the decision of the

Federal Courts pertaining to awards of this and other Boards in failing to give proper notice to all parties whose rights might be affected.

After a very careful reading of all of the awards pertaining to the jurisdictional question of notice to third parties and the Federal Courts decisions on this question we hold that the instant claim should be dismissed without prejudice, for the reason that notice was not given to all interested parties.

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

This claim should be dismissed without prejudice for the reasons and upon the grounds set forth in the Opinion and Findings.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1953.

DISSENT TO AWARD NO. 6051, DOCKET TE-5827

We dissent.

/s/ _____
J. W. Whitehouse

/s/ _____
J. H. Sylvester

/s/ _____
G. Orndorff

/s/ _____
C. R. Barnes

/s/ _____
Roger Sarchet