

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
TENNESSEE CENTRAL RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway Company, that

(1) The Carrier violated and continues to violate the scope rule of the Agreement between the parties, when on November 9, 1945, it declared abolished the position of operator-clerk in the Nashville, Tennessee, train dispatcher's office and unilaterally transferred all of the work of the position to the chief train dispatcher and to trick train dispatchers, employees not under the Agreement, in the same office; and

(2) If the Carrier elects to continue the performance of the transmitting and/or receiving of messages, reports of record by telegraph or telephone in the Nashville train dispatcher's office, it shall be performed by and be assigned to employees under the Agreement in accordance with the rules of said agreement; and

(3) For each day on each eight hour trick that the violations took place, commencing December 28, 1949 and continuing until the violations are corrected, the Carrier shall be required to pay to the senior idle employee under the Agreement on the seniority district, eight hour's pay at the established rate for such work.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of May 1, 1924, as to rules and working conditions, subsequently revised and amended September 1, 1949, is in effect between the parties, hereinafter referred to as the Telegraphers' Agreement.

There is one division office known as the train dispatcher's office on the Tennessee Central Railway which is located at Nashville, Tennessee, in which is employed a trick train dispatcher on each eight hour shift around the clock twenty-four hours a day and a Chief Train Dispatcher who works during the daylight hours.

Prior to June 12, 1945, The Order of Railroad Telegraphers represented the train dispatchers on this railway. On and after this date these employees were represented by the American Train Dispatcher's Association. Until

was included in said scope rule but such position has been worked only for short periods and the term does not refer to the chief dispatcher.

The character of duties performed by the chief, as well as trick and relief train dispatchers, has undergone no change as far back as recollection goes. This is attested to by both Mr. W. C. Loden, chief dispatcher for past seven years and dispatcher since 1918, and Mr. W. R. Williams, General Chairman of Dispatchers, and extra and regular dispatcher for the past 25 years. Both also attest to the fact that the operator-clerk employed in dispatchers' office during the war only relieved dispatchers of as much of the excess detail as he could handle. No such assistance as referred to was provided dispatchers during the remaining 16 hours in the day during the war, and other than that referred to, no such assistance has been provided dispatchers for a period of more than 20 years. Also note statement of Mr. Williams as to message work added to the wartime operator-clerk job, "which message work was transferred to other operator-clerks when the job was abolished", and reiteration of his previous protest "against any of what has always been dispatchers' work being handed over to the telegraphers' organization."

The work ordinarily and customarily performed by the chief dispatcher has never been placed within the confines of the scope rule of the agreements with either dispatchers or telegraphers and no basis exists for claim to any of such work performed by this official of the Company.

Railway Company further directs attention to the fact that complainant Employees have filed no previous complaint concerning work performed by dispatchers, notwithstanding no change ever having occurred in the character of work performed by them. Certainly this is a case in point which falls in the "hoary with age" category, and is, in itself, sufficient reason for denial.

In the light of the record, and for the reasons stated, Railway Company respectfully requests that your Honorable Board either dismiss or deny the claim in its entirety.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: At the Train Dispatcher's office at Nashville, Tennessee, there is a Trick Dispatcher used on each shift in round-the-clock service. There was a continuously operated telegraph office at Shops Yard Office which was located about a mile from the Train Dispatcher's office. It is the contention of the Organization that Dispatchers are doing Telegraphers' work at the Train Dispatcher's office. Claim is made for reparations for the senior idle Telegrapher for each day that Telegraphers' work is performed by Dispatchers.

The record shows that from May 31, 1931, until May 18, 1942, Train Dispatchers performed all the train dispatching work without the aid of a Telegrapher. On the latter date a position of Operator-Clerk was established at the Train Dispatcher's office because of a heavy movement of troops and war material brought about by World War II. This Telegrapher performed some of the Telegraphers' work formerly performed at Shops Yard Office. On November 9, 1945 the Telegrapher-Clerk position was abolished at the Train Dispatcher's office because of a return to normal conditions following the war. The Carrier asserts that all telegraph work performed at the Train Dispatcher's office was returned to the Shops Yard Office where it was performed by

Telegraphers at that point. The Organization contends, on the other hand, that there is Telegraphers' work being performed by Dispatchers at the Train Dispatcher's office and for this alleged violation the claim is made. In reply to this the Carrier asserts that the Train Dispatchers are doing the same work that they have done for a great many years on this property. The Organization then asserts a rule which it alleges as the controlling factor. The rule provides:

"No employes other than those covered by this agreement shall be required or permitted to transmit or receive train orders or messages by telephone or telegraph except in cases of emergency."

(Rule 12—current Agreement)

The record discloses that prior to June 22, 1945, the Dispatchers on this Carrier were represented by the Telegraphers' Organization. On that date the American Train Dispatchers Association was certified as the Train Dispatchers bargaining Agent. The Telegraphers' Organization contends that on and after June 22, 1945 the Dispatchers lost any right they had theretofore exercised in performing any work falling within the specific provisions of Rule 12, even though they had performed it for many years previously with the acquiescence of the Telegraphers' Organization. Briefly stated, the foregoing constitutes the main contentions of the parties as gathered from the excessively long submissions of the parties.

This claim was first presented to the Carrier on September 9, 1949. The Telegrapher position in the Train Dispatcher's office was abolished on November 9, 1945. The claim is a continuing one. We are of the opinion that the failure of the Organization to protest the Carrier's action in abolishing the Telegrapher position at the Train Dispatcher's office and its failure to protest the performance of Telegraphers' work by Dispatchers, if such was the fact, constitutes such an unwarranted delay as would defeat the claim. It is contemplated by the Railway Labor Act that disputes shall be handled expeditiously. To permit a continuing claim to lie dormant for almost four years, during which time penalty pay is cumulating, is not contemplated by the Act. The Organization asserts that valid reason existed for this unconscionable delay. It points out that such delay was caused by the ineptness of its General Chairman and that it felt obliged to wait for the selection of a new General Chairman in the manner provided by its organizational structure. This is not an excuse for such delay. A valid excuse for unusual delay is that caused by conditions over which the complaining party has no control and that which is induced by or joined in by the opposing party. The failures of either of the parties, induced by the ineptness or negligence of either party, or its agents and representatives, may not be interposed as a justifiable excuse for unconscionable and unreasonable delay in prosecuting a claim. Awards 4941, 6650. The Carrier in the case before us could properly assume that the Organization had acquiesced in the action of the Carrier in abolishing the Operator-Clerk's position in the Train Dispatcher's office.

Paragraphs (2) and (3) of the claim as filed with this Board raise an entirely different question. Whether or not the Carrier properly abolished the Operator-Clerk position in the Train Dispatcher's office, the Organization contends that the Train Dispatchers are doing Telegraphers' work as of the date of the claim. They demand that if Carrier elects to continue the transmitting and/or receiving of messages and reports of record by telegraph or telephone in the Dispatcher's office at Nashville, it shall be assigned to Telegraphers under the Telegraphers' Agreement. This claim was first advanced on the property on September 20, 1949 by a letter of the General Chairman addressed to the General Superintendent and the Chief Dispatcher under that date. On December 28, 1949 a claim for pay covering the work performed by Train Dispatchers was made, so long as the violation continued. The work specifically claimed by the Telegraphers is the copying and sending of messages not directly concerned with the movement of trains, the sending

and receiving of consists and reports of record, etc., having nothing to do with the control or movement of trains. The Carrier contends that the work being performed by the Train Dispatchers at Nashville has been performed by them for many years prior to 1933. The Train Dispatchers confirm these statements. The Telegraphers' Organization contends that Train Dispatchers were entitled to perform Telegraphers' work during the period they were represented by the Telegraphers but that they lost any right to perform any work belonging to Telegraphers when they elected to be represented by the American Train Dispatchers' Organization.

We point out that the transmitting of train orders is not included as work claimed by the Telegraphers under Rule 12. That rule states that no employe other than a Telegrapher shall be required or permitted to transmit train orders. The transmitting of train orders controlling the movements of trains is the primary work of a Dispatcher. The inclusion of this work in Rule 12 as the exclusive work of Telegraphers can be accounted for on the basis that Train Dispatchers on this Carrier, prior to June 22, 1945, were covered by the Telegraphers' Agreement. Any contention that Train Dispatchers lost their right to transmit train orders controlling the movement of trains when they joined the American Train Dispatchers Association is unrealistic. The Telegraphers recognize this to be true and they made no claim for the exclusive right to perform this work. We accept this mutual interpretation of Rule 12.

This record shows that work which Telegraphers could properly perform is being performed by Train Dispatchers in the Nashville Train Dispatcher's office. It also shows that this same work has been performed by them for many years. It likewise shows that the Telegraphers acquiesced in and acknowledged the right of the Train Dispatchers to do this work during the period they were covered by the Telegraphers' Agreement. There is undisputed evidence that the round-the-clock Train Dispatchers have performed the same work at the Nashville Train Dispatcher's office since 1911.

We think the work here in dispute has always been performed by Train Dispatchers on this Carrier as work incidental to their positions. The Telegraphers conceded their right to perform the work while Train Dispatchers were covered by the Telegraphers' Agreement. Apparently they have acquiesced in its performance by Train Dispatchers since 1911. Historically and traditionally the work has been that of the Train Dispatchers in the Nashville Train Dispatcher's office. By their own actions and by their own words over a period of thirty-five years or more, they have treated the disputed work as that of Train Dispatchers. Tradition has fixed the status of the parties to this dispute. We must conclude that the parties through the years intended to limit any exclusive claim to the disputed work on the part of the Telegraphers. We adopt the reasoning contained in Award 4922. A denial Award is required.

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

That the parties waived oral hearing thereon;

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

That the Agreement was not violated.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 26th day of May, 1955.