

Award No. 7076
Docket No. TE-6740

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**UNION PACIFIC RAILROAD COMPANY
(Eastern District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad, Eastern District, that:

- (1) The Carrier violates the provisions of the agreement between the parties, when it requires or permits employes holding no rights under the scope of said agreement at Omaha, North Platte and Denver to regularly transmit and receive communications of record including the morning report and Form 2810; and
- (2) If the Carrier elects to continue the performance of this communications work at Omaha, North Platte and Denver, it shall be performed by and be assigned to employes coming under the agreement in accordance with the rules of said agreement; and
- (3) For each day that the violations take place commencing June 24, 1948, and continuing on a day to day basis until the violations are corrected, the Carrier shall be required to pay to the senior idle employes under the agreement on the seniority district at each location on each shift, eight hours' pay at the established rate for such work.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of November 1, 1947, subsequently amended by a new agreement effective February 1, 1951, covering rules of working conditions and rates of pay, hereinafter referred to as Telegraphers' Agreement, is in evidence.

The Scope Rule of the Telegraphers' Agreement contains many classifications covering work belonging to the craft or class to be performed by employes holding seniority thereunder. Foremost of these classifications are those embracing the work of handling communications of record on the railroad. The classifications covering the work of "telephoners-telephoner clerks-telephone operators (except switchboard operators)" being particularly pertinent in this claim.

Commencing on or about June 24, 1948 the Carrier, acting alone, removed from the coverage of the scope of the Telegraphers' Agreement the performance of the work of transmitting and receiving messages and reports

The conduct of the parties in the instant dispute shows conclusively that the communications work performed by morning report clerks and dispatchers in the preparation and consolidation of Form 2810 has never been considered to be exclusively telegraphers' work.

CONCLUSION: The Carrier has shown in this submission that:

1. This dispute should be dismissed because the Board is without jurisdiction to hear and determine it unless notice is given to the Clerks' Organization.
2. The claim now before this Board is an expansion of the claim presented and reviewed on the property, and for that reason should be dismissed by the Board.
3. The claim is for unnamed employees at unspecified locations and the Carrier should not be required to search its records to develop claims for the Employees.
4. The claim has been unreasonably delayed by the Organization for a period of over 4 years from the date of declination by the Carrier's highest officer of appeal. This reason alone should warrant dismissal of the claims.
5. The claim is completely without merit.

There is no rule, interpretation, custom, practice or sound reason which supports the Organization's claim and it should therefore be declined.

It is hereby affirmed that all information and data herein set forth have been furnished to, discussed with, or are known to the Employees' Organization or the Claimants.

(Exhibits not reproduced)

OPINION OF THE BOARD: The essence of the claim is an alleged violation of the scope rule. That rule does not purport to describe the work encompassed but merely lists the classes of positions covered. We have regularly held that in such case it is necessary to look to custom, tradition and historical practice to ascertain the work reserved exclusively to the craft by the contract.

The work in issue here is the transmission and receipt of information from Form 2810. Since it clearly appears that such information was transmitted and received by clerks via the telephone as well as being transmitted and received by telegraph prior to June 24, 1948, we are not able to say that the transmission and receipt of such information has been exclusively reserved to telegraphers by custom, tradition and practice. Hence the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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

The agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of July, 1955.