

Award No. 8059
Docket No. TE-6875

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad that:

Teletype communication machines have been installed in J. A. Prince's office, known as PH-78 and assigned to employes outside the Telegraphers' Agreement to handle work formerly handled by Telegraphers' Agreement to handle work formerly handled by Telegraphers (Printer Operators) in "NC" Relay Office. Therefore, employes covered by the Telegraphers' Agreement shall be assigned to handle the communication work covered by the Agreement now handled on the printer machines from this office and further, an extra employe shall be allowed a day's pay for each day deprived of this work, and if no extra employe available, then a regular employe off duty who could have been used shall be compensated accordingly.

EMPLOYES' STATEMENT OF FACT: Teletype (or mechanical telegraph machine—printer) operation is a telegraphic system whereby communications are transmitted (and received) by the manipulation of lettered keys of the machine which set in motion mechanically controlled electrical impulses over a telegraphic circuit, coded so as to produce the message in printed form at the distant point.

Prior to May 10, 1950, all messages for the Office of General Freight Agent, Room 420-425 in Carrier's General Office, New York, N. Y., were transmitted and received by a Printer Operator in "NC" General Office and then delivered to and from the Office of Division Freight Agent, in the same building, by pneumatic tube.

Teletype Printer machine was installed in the Office of Division Freight Agent, New York, and placed in operation effective May 10, 1950.

Messages are transmitted and received during the assigned hours for this office, which are from 8:30 A. M. to 5:30 P. M., Monday through Friday by an employe outside the scope of the carrier's agreement with The Order of Railroad Telegraphers. Between the hours from 5:30 P. M. to 8:30 A. M., Monday through Friday, and on Saturdays and Sundays, the office of General Freight Agent is closed, and during such hours all messages are handled in "NC" General Office by a Printer Operator, who is covered by The Order of Railroad Telegraphers' Agreement.

It should be noted that in this particular case no Telegrapher positions were abolished and no clerical positions were established as the result of the changeover on May 10, 1950.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of Agreements concerning rates of pay, rules and working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto beyond the Carrier's control and not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that under the applicable Agreement, as interpreted by Decisions 42 and 68 of the Telegraphers' System Reviewing Committee, the operation of teletype machines is not the exclusive right of Telegraph Department employees; that the Carrier is not required to assign a Telegraph Department employee to the operation of the teletype machines in the office of the Freight Traffic Department in Pennsylvania Station, New York; and that the Unnamed Claimants are not entitled to the compensation which allegedly they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

All data contained herein have been presented to the Organization involved in the instant dispute.

(Exhibits not reproduced)

OPINION OF BOARD: Prior to May 10, 1950, there were no teletype machines in the Freight Traffic Department Office in Pennsylvania Station, New York, known as PH-78. Teletype messages incident to the work of that office were received and transmitted by Telegraph Department employees located in the Carrier's General Relay Office, known as NC, in the Pennsylvania Station. Messages received or messages to be transmitted traveled by pneumatic tube between PH-78 and NC.

On May 10, 1950, teletype machines (9 receivers and one transmitter) were placed in operation in PH-78, and their operation turned over to clerks or stenographers employed in that office. The Telegraphers claim that this was a violation of the Scope Rule of their Agreement.

The Scope Rule does not specify the duties of the classes or positions listed in it, and under our uniform decisions must be held to reserve to the classes enumerated therein the work traditionally and customarily performed by such classes. Where traditionally certain work has been performed exclusively by a class named in the Scope Rule, it is a violation of the Agreement to turn any such work over to others. But where other work has traditionally and customarily been performed partly by a class named but partly also by

others not covered by the Telegraphers' Agreement, then a violation can be shown only by proving a departure from an established practice in the allocation of the work.

Such an established practice is involved here. On the property of this Carrier, both Telegraphers and Clerks have operated teletype machines. A dispute concerning this developed in 1930, and resulted in Decision No. 42 of the Telegraphers' Reviewing Committee, composed of an equal number of Management and Employee members. The decision reads as follows:

"DECISION:

1. The operation of Teletype machines in Telegraph Offices shall be performed by employees within the scope of the Regulations governing Telegraph Department employees.

2. The operation of Teletype machines in other than Telegraph Offices, which does not include duties belonging exclusively to Telegraph Department employees, may be assigned to employees not coming within the scope of the Regulations governing Telegraph Department employees.

3. The operation of Teletype machines in other than Telegraph Offices, which include duties belonging exclusively to Telegraph Department employees and duties of other classes of employees, shall be apportioned between such groups on the basis of the preponderance of duties of the assignment. In making allotments under this paragraph all such assignments on the division will be included.

4. This decision does not affect the incumbents of present positions but will apply only as vacancies occur or new positions are created."

Subsequently, in 1931, a dispute involving the proper interpretation of Item 3 of that decision was decided by Decision No. 68. The Carrier relies on Item 3 of Decision No. 42, as thus interpreted, asserting that the duties connected with the operation of the teletype machines take far less than four hours a day and were therefore properly assigned to employees other than those covered by the Telegraphers' Agreement.

Apart from disputing this fact, the Organization denies the validity or binding effect of Decisions 42 and 68 on the ground that they were made by Management acting in concert with a "Company Union". Aside from the fact that this Board cannot (certainly at this late date) adjudicate such an issue, even if there were proof on which to do so, which there is not, it is sufficient to state that practice ever since 1930 has been in conformity with those decisions. Those decisions were in effect, and practice was in conformity with them, at the time the Scope Rule was adopted in the first agreement between these parties. The Scope Rule must therefore be interpreted in the light of that practice, regardless of what that practice was based on. We put this decision solely on the basis of the Scope Rule and practice which is uncontroverted.

We have here, then, only a disputed issue of fact: how much time is required for the operation of the teletype machines? The Company made a check, with a monitoring device, but denied to the Organization an opportunity to take part in or observe that check. The Organization was able to make only a partial check, due to inability to gain access to PH-78.

Ordinarily, the burden of proof being on the Organization to establish a violation of the Agreement, the failure to present a complete check establishing a violation would result in denial of the claim. But where, as here, the failure of the Organization's proof is due to the Carrier's denial of opportunity to obtain proof, a different result necessarily follows. The case must be referred back to the parties with instructions to institute a joint check

to establish the disputed facts. If on the basis of that joint check the parties are unable to resolve the dispute, it may be referred back to this Board for determination.

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

That the claim is referred back to the parties in accordance with the foregoing Opinion.

AWARD

The claim is remanded in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September, 1957.