

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, 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:

(a) The carrier violated and continues to violate the agreement between the parties signatory thereto, when it requires or permits employes other than those covered by said agreement to operate printing and/or mechanical telegraph machines used in the transmission or reception of messages and reports of record, and/or to perforate tape or cards as a function in the transmission or reception of messages and reports of record at the North Yard Office, Salt Lake City, Utah, and,

(b) That for such violations the carrier shall compensate the senior idle employe or employes covered by the Telegraphers' Agreement for the equivalent of a day's pay for each eight hour shift, both day and night, since the September 24, 1952 date on which claim was filed, at the Telegraphers' rate applicable to that particular location.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing effective date of January 1, 1952, by and between the parties and referred to herein as the Telegraphers' Agreement, is in evidence.

A freight yard is maintained by the Carrier at Salt Lake City, Utah. It is located approximately one mile northeast of Carrier's Salt Lake City passenger station.

There is an office located in this freight yard known as North Yard Office. No telegraph service employes are assigned in this yard office. A telegraph office known as "SA" office is located at the passenger station where all of the Carrier's Salt Lake City telegraphic communications service has heretofore been handled exclusively by telegraphers.

Under date of September 24, 1952, the Carrier, acting alone and without conference or negotiations with the Organization installed and placed in operation at North Yard Office certain telegraphic machines to be operated by employes not covered by the Telegraphers' Agreement which had for their purpose the performance of communications service, such as transmitting and

chines used in the transmission or reception of messages and reports of record;

2. The use of clerical employes **to operate machines to perform cards** does not violate the Telegraphers' Agreement.

The work functions claimed for telegraphers are clearly clerical, and the assignment thereof to clerks is proper. On the merits, the claim should be denied.

The foregoing demonstrates that—

(1) This Board will not have jurisdiction over this dispute unless Section 3(j) of the Railway Labor Act is complied with;

(2) In any event, there is no merit to the Organization's claim.

All information and data contained in this Response to Notice of Ex Parte Submission is a matter of record or is known by the Organization.

(Exhibits not reproduced).

OPINION OF BOARD: In this docket Petitioner charges that the Respondent Carrier is violating its agreement with the Order of Railroad Telegraphers by operating certain machines with employes not covered by the Agreement. It is asserted that the work at issue is work which belongs clearly to the Telegraphers' craft. The claim arose in Carrier's North Yard Office in Salt Lake City, where a series of machines were installed for handling reports and records involving wheel reports, interchange reports, train consists, manifest passing reports, manifest reports, car reports, etc.

Petitioner contends that a substantial part of the work associated with the handling of these reports is work under the scope of the Telegraphers' Agreement.

We must first give consideration here to the matter of possible notice to other parties who may be involved in this dispute. In its first submission the Carrier contended that notice in accordance with the requirements of Section 3, First (j) must be given to the Brotherhood of Railway and Steamship Clerks as an involved party since the granting of the relief here claimed would vitally affect positions under the agreement between the Carrier and the Clerks.

When this docket came before the Division in the normal course of handling the Division deadlocked on the matter of whether notice would be given to the Clerks. Thereupon, the National Mediation Board was requested to name a Referee to sit as a member of the Division and to decide the notice issue.

The National Mediation Board named Judge Robert G. Simmons as Referee to sit with the Division as a member thereof to break the deadlock on the issue of giving notice to a third party. Referee Simmons proposed an award which would have required the giving of notice. This proposed award failed of adoption. Thus the deadlock continued. On or about January 31, 1955 the Carrier Members moved that notice be given in accordance with the requirements of Section 3, First (j). Again, for the lack of majority support, the motion to give notice failed. Thereupon, the Division was deadlocked on the matter once again.

When this case came on for consideration by the Division with the present Referee sitting as a member thereof, the issue of notice was asserted once again. Therefore, we must consider this issue prior to making a determination on the merits.

It is unnecessary to enter upon an extended discussion here of the so-called third party issue. The matter has been considered in many awards by

many referees. There is no way of reconciling the many awards on this subject. The present referee has discussed the matter to some extent in other awards. (8022, 8023, 8105, 8106, 8107). His views are therefore on record with respect to this issue. In brief, the present status of judicial holdings on this question make it incumbent upon the Division to give notice where a genuine third party interest is involved.

In the instant case before us claim is made for certain work which it is alleged is presently being performed by employes under the Clerks' Agreement. Under such circumstances, the Clerks would appear to have an interest involved in the case. This being the case, consideration of and action on the merits must be deferred until the Division has given notice to the Clerks' Organization in accordance with the requirements of Section 3, First (j) of the Railway Labor Act, as amended, as interpreted by the courts.

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 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 a decision on the merits must be deferred pending notice to the Brotherhood of Railway and Steamship Clerks.

AWARD

Consideration of and decision on the merits is deferred pending notice by the Division to the parties, Carrier, Order of Railroad Telegraphers, and Brotherhood of Railway Clerks, as contemplated by Section 3, First (j) of the Railway Labor Act as interpreted by the courts.

NATIONAL RAILROAD ADJUSTMENT BOARD
By ORDER of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1958.