Award No. 8538
Docket No. TE-7855

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (Coast Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway System that:

1. The Carrier violated and continues to violate the Agreement between the parties when, on or about September 1, 1953, without conference or agreement it removed the work of transmitting and receiving wheel and switch list reports from employes covered by the Telegraphers' Agreement at Richmond, California, and delegated the performance thereof to employes at Richmond not covered by said agreement; and

2. The Carrier further violated and continues to violate the Agreement between the parties, when, on or about September 15, 1953, without conference or agreement, it removed the above described work from employes covered by the Telegraphers' Agreement at First Street, Los Angeles, California, and delegated the performance thereof to employes at First Street not covered by said agreement; and

3. For each and every eight hour shift that communications work is performed by employes not covered by the Agreement at Richmond and First Street, Los Angeles, California, by means of printing telegraph machines there located the Carrier shall be required to compensate the senior idle extra telegraphers on the appropriate seniority roster in an amount equivalent to a day's pay at the rate applicable to the particular location and position; and, if there be no such idle extra telegrapher, then the Carrier shall compensate the senior telegraph service employe or employes idle on rest days on the appropriate seniority district in an amount equivalent to a day's pay at the time and one-half rate.

In conclusion, the Carrier reasserts that the instant dispute **should be either dismissed or denied in its entirety for the following reasons which are amply supported by the record:**

(1) The National Railroad Adjustment Board is without authority to consider or determine the dispute, which clearly involves a long-standing jurisdictional question on the Carrier's property.

(2) The dispute is one which may only be resolved by negotiation and tri-party agreement between the respondent Carrier, The Order of Railroad Telegraphers and the Brotherhood of Railway and Steamship Clerks.

(3) The handling complained of is not violative of any rule of the Telegraphers' Agreement, hence the Employes' claim is entirely without support under the provisions thereof relied upon by the Employes.

(4) The Employes' long delay in pressing for a final determination of the controversial issue which is the subject of the parties' disagreement requires a denial of the Employes' claim in the instant dispute.

All that is herein contained has been both known and available to the employes and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: In 1953 the Carrier installed teletype machines in its yard offices at Richmond and Los Angeles, California, and assigned the operation of these machines to clerical employes. The machines are connected with reperforators and transmitters located in telegraph offices manned by employes of the telegrapher craft.

Petitioner alleges that this violates its Agreement because prior to the installation of these teletype machines all telegraphic communications work at these locations was performed by telegraphers, including the work of transmitting wheel reports, and that this work was diverted to employes not covered by the Agreement when Carrier installed the teletype system and assigned clerks to its operation. Essentially it is the position of Petitioner that the operation of teletype machines for the purposes set forth herein is work belonging **exclusively** to telegraphers under the provisions of the contract between this Carrier and the Order of Railroad Telegraphers dated June 1, 1951.

Carrier raises certain procedural objections and, in addition, asserts the Agreement in evidence here and the facts of record do not support Petitioner's claim that this work belongs exclusively to telegraphers.

After a careful study of this rather extensive and exhaustive record, reciting in detail the history and background of this and similar disputes, we find it necessary to emphasize that our decision will be strictly confined to the narrow limits of the claim here presented. It should not be interpreted as of general application.

The record is clear in one respect, at least. Since 1927, when the first teletype system was installed on this property, clerks have been employed to

operate these machines where they have been located in other than telegraph offices. It is also true that the Petitioner has vigorously protested this practice and has sought a change in the rules to establish its exclusive right to the work involved. But these efforts have been unsuccessful and the practice has continued. The dispute before us involves the right to operate teletype machines in offices other than telegraph offices. Under the practice followed on this property it is conclusively shown that telegraphers have not enjoyed heretofore an exclusive right to such work.

Does the currently effective Agreement provide that the work involved here is exclusively telegraphers? The Scope Rule includes certain designated positions "and such other positions as may be shown in the appended wage scale or which may hereafter be added thereto." Petitioner asserts that because the wage scale contains the position of "printer clerk" and the duties of a printer clerk include operation of teletype machines, we should find that the work here involved is covered by the Agreement. It is further contended that we should so find because the work performed by the clerks operating the teletype machine is identical with that performed by printer clerks (Los Angeles relay) prior to the installation of teletype machines in the yard office.

Petitioner's position is untenable for several reasons. First, there is no evidence in this record that printer clerks were performing such "identical work". Manifestly this would have been impossible because no teletype machines were in use at these locations prior to September 1, 1953. Second, while the wage scale appended to the agreement does list printer clerks and other positions in various telegraph offices on this property, the coverage of the Agreement is limited to the specific positions set out in the wage scale appendix. There is no reference to or listing of the position of printer-clerk at either the Richmond or Los Angeles offices or in other offices of this Carrier where clerical employes operate teletype machines. Third, the record shows that Petitioner has sought unsuccessfully to revise this Scope Rule to insure an exclusive right to the operation of teletype machines, whether located within or without established telegraph offices.

When a collective bargaining agreement is consummated and existing practices are not abrogated or changed by its terms, those existing practices are just as valid and enforceable as if authorized by the agreement itself, (Awards 1257, 1568, 3461, 41054); and particularly when, as here, an existing practice is sought to be changed.

Claimants here have not conclusively established their right to perform the work in question to the exclusion of others similarly employed, either through custom and practice on this property or under the terms of the contract. Thus, in effect, this Board is being asked to grant something the agreement does not provide. The rule that we are without authority so to do is too well established to require further comment.

In view of the foregoing, there is no basis for a sustaining award and 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 whole record and all the evidence, finds and holds:

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 Carrier did not violate the Agreement.

AWARD

Claim denied

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1958