

Award Number 9344

Docket Number TE-8321

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago and St. Louis Railroad, that:

1. Carrier violated the agreement between the parties signatory thereto when, alone, it abolished the position of second shift operator at Noblesville, Indiana, September 3, 1953, without in fact abolishing the work of the position and transferred said work to employees not covered by the Telegraphers' Agreement; and

2. The Carrier shall restore the position and return the work thereto, compensating the former occupant of the position for any loss in wages or expenses incurred by reason of Carrier's violative act; and

3. Pay to the senior idle employee, extra in preference on the seniority district involved, 8 hours at the pro rata rate for each day beginning September 3, 1953 and on a continuing basis until the violation has been corrected, except on holidays when such employee would be entitled to be paid time and one-half rate; and

4. Any other employees who have been adversely affected by Carrier's improper abolishment shall be compensated for any loss of wages and expenses incurred, such information to be developed by a joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: The Agreements between the parties to this dispute are on file with this Division of the National Railroad Adjustment Board, and by reference, are made a part of this submission.

This claim arises out of Carrier's unilateral abolishment of the second shift operator-clerk's position at Noblesville, Indiana on September 3, 1953, without in fact abolishing the work of the position, and the transfer of said work to employees not covered by the Telegraphers' Agreement at Noblesville.

Noblesville, Indiana is located on the Lake Erie and Western District of Carrier's railroad. It is some 22.2 rail miles distance from Indianapolis, Indiana and 17.5 rail miles distance from Tipton, Indiana. Noblesville, prior to the

The Employees also claim compensation for any wage loss or expense of any other employe adversely affected and request a joint check of Carrier's record to develop the information. Obviously, there are none such. Jones displaced no one. There are many awards holding that the Carrier is not required to develop employes' claims. In the instant case there are no circumstances to justify any such claim, and it is obvious that this part of the claim is without factual basis or support.

The entire claim is without merit and should be denied.

All that is contained herein is either known or available to the Employees and their representatives.

(Exhibits not reproduced).

OPINION OF BOARD: On September 3, 1953, the Carrier abolished the second shift position of Operator Clerk at Noblesville, Indiana.

The Employees' state that this position had been in continuous existence, and filled by an employe covered by the Telegraphers Agreement, for at least half a century. The work performed by the incumbent of the position was all of the communication work required during his tour of duty and a considerable amount of clerical work. When the position was declared abolished the Carrier assigned some of the work to the one remaining telegrapher position, the first shift operator-clerk. But a substantial amount of the work, most of it, was assigned to clerks, whose hours of duty were changed more than once so they could be in a position to do the work when it was required; that the assignment of the clerical work to clerks violated their rights by depriving them of an opportunity to work and be compensated, rights accruing to them by virtue of their Agreement.

The Carrier states that due to economic factors it was necessary to abolish this position. That clerical positions have been employed at Noblesville for more than forty years. As the need for telegraphic work decreased at Noblesville, the two remaining telegraphers at that point were assigned more and more clerical duties to fill out their time. On September 2, 1953 the station force at Noblesville consisted of a supervisory Agent, four clerical positions and a first and second trick operator-clerk. The first trick operator-clerk was assigned from 7:00 A. M. to 3:00 P. M.; the second trick operator-clerk was assigned 3:00 P. M. to 11:00 P. M. and the clerks from 8:00 A. M. to 5:00 P. M. All positions were assigned to work Monday through Friday, with Saturday and Sunday as rest days. In September of 1953 it was determined that Noblesville could be eliminated as a train order station between the hours of 4:00 P. M. and 11:00 P. M. Any messages of record arising outside the first trick operator-clerks assigned hours could be held over and handled by him the next morning. Therefore on September 3, 1953, the position of second trick operator-clerk was abolished. The telegraphers duties of the second trick operator-clerk was handled by the first trick operator-clerk and the clerical duties of the second trick operator-clerk were handled by clerks. No duties that belonged exclusively to the telegraphers remained to be performed between 3:00 P. M. and 11:00 P. M.

From the submissions and briefs submitted at the hearing, this Board finds that the Carrier did not violate the Telegraphers Agreement when it abolished the operator-clerk second trick at Noblesville. It assigned the telegraphers duties to the first trick operator-clerk, and the clerk's work to the clerical force. The second trick operator-clerk did not have the right, under the Telegraphers Agreement, to the exclusive right to perform clerical work

even though he had performed clerical work for fifty years. The Scope Rule of the Telegraphers Agreement does not give him the exclusive right to perform the clerical work as contended by the employees. Therefore this claim will 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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April, 1960.

Dissent to Award 9344, Docket TE-8321.

This award represents grievous error in that it is wholly unresponsive to the true issues involved, and merely reflects the disposition of the majority—the Carrier Members and the Referee—to improperly use this Board to relieve carriers of their contract obligations. Congress never intended that the powers of this tribunal be so grossly misapplied.

The dispute resulted from the Carrier's action of abolishing the second shift telegraphers' position at Noblesville, Indiana when the work of that position remained to be performed and was assigned, for the most part, to employees of another craft, whose hours of service had to be changed in order to make them available at the time the telegraphers' work was required to be performed.

The telegraphers' position had been in existence for at least fifty years, according to the record, and had performed the same type of work, that is, communication and clerical work, for the entire period. Although the record shows that employees subject to the Clerks' agreement had been employed at this station for at least forty years, it does not show that any of such employees ever worked second shift hours until after the telegraphers' position was abolished and the hours of a clerk were changed to cover such shift.

Among the duties of the telegrapher was a requirement to handle all work in connection with the interchange of cars between this Carrier and a connecting railroad at Noblesville. The handling of this interchange work involved both clerical and communication duties. Both items of such work

have been held to belong exclusively to members of the telegraphers' class and craft. For example, Award 5993 held that all work involved in the interchange of cars at a one-man station belongs exclusively to this class. And Noblesville was for many years a one-man station so far as the second shift was concerned. Award 6693 is a good example of our holdings with respect to the transmitting of information about cars ready to move from a station. There are literally scores of awards which support the view that such work cannot properly be taken from telegraphers and given to others. Also so well established that it needs no citation of awards to support it is the principle that a Carrier may not abolish a position which was established pursuant to an agreement and then require its work to be performed by members of another craft not subject to the agreement.

Another principle, well established by this Division, is the so called ebb and flow rule. That principle includes as one of its main precepts the rule that even where clerical work is not by agreement specifically reserved to telegraphers they must be retained to perform it in preference to other employes if there is any communication work left to be performed.

In his Opinion in this award the Referee carefully avoided any reference to the fact that practically all of the communication work formerly required of the telegrapher whose position was abolished remained to be performed thereafter, and was performed by an employe from another craft. But the record speaks for itself.

In failing to apply any of the principles referred to above the majority failed to dispose of this dispute in a proper manner. The award is clearly erroneous, and I dissent.

J. W. Whitehouse,
Labor Member.

**REPLY TO LABOR MEMBER'S DISSENT TO
AWARD NO. 9344, DOCKET NO. TE-8321**

Award 9344 is specifically responsive and correctly determinative of the simple issue involved in this case. The simple question at issue was Carrier's right to abolish a Telegrapher's position and assign the remaining work thereof to employes entitled to perform it. Many of our Awards uphold Carrier's rights in this respect and Award 9344 correctly followed such precedents in upholding the Carrier's rights in this respect in the instant case.

The record shows that, in this case, Carrier abolished the position of second trick Operator-Clerk and transferred the remaining Telegraphers' work thereof to the first trick Operator-Clerk and transferred the remaining clerical work thereof to Clerks. Award 9344 so states. The fact that the Carrier also changed the hours of a Clerk under the Clerks' Agreement did not and could not violate the Telegraphers' Agreement. Furthermore, it cannot be successfully refuted that, with certain exceptions, it is a fact that clerical work, as such, is not reserved as a general proposition to any particular class, and the same is true of the use of the telephone. This Division has so held in numerous Awards.

Awards 5993 and 6693, cited by the Labor Member in his Dissent, are not relevant to the instant case. Concededly, Noblesville is not a one-man station and Award 5993 is not directly in point notwithstanding the work therein

might have been similar to some of the work involved here. The question involved in Award 6993 was Carrier's right to call a Clerk to perform work on rest days of the positions involved which on other days of the week was performed by the Agent-Telegrapher and hence, it likewise is not in point.

Award 9344 is sound precedentwise and otherwise. Among numerous Awards to the same effect, the following general principles from Award 6945 are conclusive over the simple issue which confronted the Division in this case:

Award 6945, Messmore:

"* * * It is the duty of management to operate its railroad with efficiency and economy. In so doing it may abolish positions not needed and assign the remaining work thereof to others of the same craft or to employees of another craft who are entitled to perform it."

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ R. A. Carroll

/s/ C. P. Dugan

/s/ J. F. Mullen