

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NEW ORLEANS AND NORTHEASTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Cincinnati, New Orleans & Texas Pacific Railway (New Orleans & Northeastern Railroad), that:

1. Carrier violated agreement between the parties hereto when on October 21, 1954, it declared abolished the third shift telegrapher-clerk position at Hattiesburg, Mississippi, because the work of such position remained to be and was performed by an employe not covered by Telegraphers' Agreement.
2. Carrier violated agreement when on March 1, 1955 it declared abolished second shift position at Hattiesburg, Mississippi, because the work of such position remained to be and was performed by an employe not covered by Telegraphers' Agreement.
3. Carrier shall be required to restore the work of such positions to Telegraphers' Agreement and if needful in the performance of all such work, that such position or positions be restored.
4. That B. G. Netterville, R. J. Risher, R. L. Lott and all other employes affected by the improper abolishment of the positions as aforesaid, shall be compensated for all wages lost as a result of such wrongful abolishments.
5. That B. G. Netterville, R. J. Risher, R. L. Lott and all other employes entitled thereto, shall be paid \$5.00 per day in accordance with Rule 15, for each and every day they and each of them have been withheld from service on position to which entitled, i.e., second or third shift, Hattiesburg, Mississippi.
6. That Carrier be required to permit a joint check of its records for the purpose of establishing names of employes and amounts to which they are entitled account wrongful abolishment of said positions.

here attempting to assert is without merit and if not dismissed by the Board for want of jurisdiction, it must be denied.

Claim being barred, the Board should dismiss it for want of jurisdiction. However, should the Board assume jurisdiction and consider claim on the merits, it cannot do other than make a denial award.

All evidence submitted in support of the Carrier's position has been made known to employe representatives.

Carrier, not having seen the ORT's submission, reserves the right, after doing so, to make appropriate response thereto and present any additional facts and evidence which may be necessary.

OPINION OF BOARD: The Carrier abolished the Second and Third shift Telegrapher position at Hattiesburg, Mississippi, on October 31, 1954 and March 1, 1955, respectively. Telegraphers positions previously maintained at Hattiesburg, Mississippi, were abolished in the early twenties and the Train Dispatchers thereafter performed all train order work until 1941 when, incident to the establishment of Camp Shelby and war operation in general, the work increased to the point that the Train Dispatchers required assistance and Telegraphers were put on for that purpose.

The Employes state that the Carrier violated their Scope Rule 1, Classification Rule 2, Guarantee Rule 6, Expense Rule 15 and Train Order Rule 31, when it abolished the Second and Third shift Telegrapher positions at Hattiesburg, Mississippi. That Train Dispatchers and Clerks are performing work which is the work of a Telegrapher under their effective agreement.

The Carrier states that when the business at Hattiesburg, Mississippi decreased to the point that the Second and Third shift Telegraphers were no longer needed the remaining telegrapher work could readily be handled by the First shift Telegrapher at that point and the remaining work by the clerks and the Train Dispatchers.

Rule 31 of the Telegraphers' Agreement effective September 1, 1949 reads as follows:

"Rule 31 — Handling Train Orders

"No employee other than covered by this agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in emergency, in which case the operator will be so advised by the Chief Dispatcher and will be paid for the call. At offices where two or more shifts are worked, the operator whose tour of duty is nearest the time such orders were handled will be entitled to the call. * * *"

Under Rule 31, we find that Train Dispatchers are permitted to handle train orders at a telegraph or at a telephone office where an operator is employed. This means where a Telegrapher is employed. We find that the train orders that were handled by Train Dispatchers in this claim were handled at an office where a Telegrapher is employed. The clerical work performed by clerks that had previously been performed by a Telegrapher before his position was abolished may be performed by clerks as we have said in many decisions under the "Ebb and Flow" rule.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 13th day of April, 1961.