

**Award No. 10491**

**Docket No. TE-8490**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Frank J. Dugan, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE TEXAS & PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Texas & Pacific Railway, that:

1. The work and responsibilities of operating two teletype machines in the Texarkana, Texas-Arkansas Yard Office since May 1, 1939, belongs exclusively to employes under the prevailing Telegraphers' Agreement in accordance with the provisions of Article 1 (a) of said Agreement and the Memorandum of Agreement between the parties supplemental thereto dated April 28, 1939, and effective May 1, 1939;

2. The Carrier violated Article 1 (a) and other rules of the prevailing Telegraphers' Agreement, and the Memorandum of Agreement May 1, 1939, when, commencing on August 1, 1948 it unilaterally assigned employes not under the Telegraphers' Agreement to regularly operate the two teletype machines installed in the Texarkana Yard Office since May 1, 1939;

3. The Carrier shall be required to establish the necessary number of positions to perform the operation of these two additional teletype machines and fill the positions in accordance with the governing rules of the Telegraphers' Agreement; and

4. The senior qualified employes under the Telegraphers' Agreement who were and have been available commencing August 1, 1948, shall be paid a day's pay for each day's work thus lost to them until this work is regularly assigned to employes under the Telegraphers' Agreement.

**EMPLOYES' STATEMENT OF FACTS:** There is an agreement in effect between the parties with effective date of May 15, 1950.

In 1939 during a mediation negotiation concerning the jurisdiction of work on mechanical telegraph transmission and reception appliances, two agreements were signed by the parties. Surveying the various locations,

There are other reasons why this "claim" is without merit, but we have conclusively demonstrated that fact beyond the shadow of any doubt. We have also shown that it should, in the first place, be dismissed with prejudice, for the reasons shown in 1, 2, 3 and 4 above.

The Carrier requests the Board to dismiss the claim with prejudice, or in the alternative, to deny it.

It is affirmed that all data submitted herein in support of the Carrier's position has heretofore been presented to the Organization and is hereby made a part of the question in dispute.

**OPINION OF BOARD:** The Organization and the Carrier signed the following Memorandum of Agreement:

"It is agreed and understood that the Teletype, or mechanical transmission and reception machines now located in the yard office at Texarkana are excepted from the agreement effective May 1, 1939, and the provisions of that agreement as set up in the Scope Rule does not apply at this location.

"Dated at Dallas, Texas, this 28th day of April, 1939.

**"FOR THE TEXAS AND PACIFIC RAILWAY CO.**

**"/s/ A. J. Chester**  
**General Manager**

**"FOR ORDER OF RAILROAD TELEGRAPHERS**

**"/s/ W. A. Canafax**  
**General Chairman"**

At the time this Agreement was signed there were two teletype machines at Texarkana. About August 1, 1948 two additional machines were installed. The Organization complained that this violated the Agreement. The Carrier denied the claim relying on the Memorandum Agreement particularly that portion saying "and the provisions of that agreement as set up in the Scope Rule does not apply at this location."

The Organization contends the Memorandum of Agreement was limited to the first two machines. But this contention would require the Board to stop at the words effective May 1, 1939 and to excise the words "and the provisions of that agreement as set up in the Scope Rule does not apply at this location."

This the Board does not have authority to do for it plainly authorizes the Carrier to install the additional machines.

In view of the disposition of this claim the procedural objections of the Carrier are not discussed.

**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 Agreement was not violated.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of March 1962.