Award No. 10515
Docket No. TE-8119

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad, that:

(1) — Carrier, commencing on or before August 19, 1953, violated and continues to violate the provisions of the agreement between the parties hereto, when it required or permitted, and continues to require or permit individuals not coming within the scope of the said agreement to transmit and receive, by means of telegraph-printing machines (teletype) messages or matters of record at its Houston, Texas, general office;

(2) — The senior idle employes on Carrier's Southern Division shall be compensated on the basis of not less than 8 hours daily, at the prevailing printer-teletype rate of pay, beginning 30 days prior to August 19, 1953, and continuing until the violations charged herein cease, for the work of which they have been improperly deprived;

(3) — Carrier shall be required to establish a printer-teletype position in its Houston, Texas, general office, under the scope of the agreement between the parties hereto, and fill that position in accordance with the governing rules of the said agreement.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties hereto, bearing an effective date of August 1, 1947 as to rules and working conditions, and of September 1, 1947 as to rates of pay. Employes rely on Rules 1, 3, 6, 8, 11, 31, 32, 38, Memorandum No. 1 and the Wage Scale of that agreement in support of the claims presented, and will quote those rules, or their applicable provisions, in sequence as they may be developed throughout our discussion.

For many years Carrier has maintained general freight and passenger offices at Houston, Texas, although not at all times having either a leased, or directly owned, trackage into that city. Effective June 1, 1950, the so-called Burlington-Rock Island Railroad, Dallas to Houston, Texas, was jointly "adopted" by respondent Carrier and the FtWorth & Denver City Railroad, as witnessed by the first paragraph of the circular reproduced below:

Prior to the establishment of the above described service at Houston any telegraphic communication for our Houston offices was handled by a joint telegraph office at Houston by telegraphers who were not Rock Island employes, hence not subject to the applicable Rock Island Telegraphers' Agreement.

Therefore, when this equipment and circuit were leased from the Western Union Telegraph Company and operated by Rock Island employes other than telegraphers, no work was removed from Rock Island telegraphers so as to injure them in any way.

From 1948 to 1953 the operations which form the basis of the instant claims were similarly handled without complaint or claim by the telegraphers' organization.

Nothing that happened on the date of claim changed any operation at Houston as far as the validity of this claim is concerned. Moving the equipment from one office to another within the city did not make Houston an online office. Nor did moving of the equipment from one Houston office to another office place operation of such Western Union equipment in the hands of employes subject to the telegraphers' agreement.

It must be pointed out that the operation of any teletype equipment at Houston was done in order to get this information into the hands of a Rock Island Telegrapher for transmission. This is definitely clerks' work, and whether that action is accomplished by messenger, mail, telephone, or teletype the clerk is performing nothing more than clerks' work. Inasmuch as the teletypewriter, operated by the clerk in this case, is connected only to Ft. Worth and Rock Island telegraphers at that location do the actual transmitting to other points, the Houston employes perform no telegrapher's work. This is precisely the situation that obtains at all other off-line offices, except that there the Western Union Telegraph circuit is fed to Chicago Relay where the messages are transmitted by Rock Island telegraphers to other points. For all practical purposes the Houston circuit might just as well have been linked with Chicago instead of Ft. Worth as far as this issue is concerned.

Because the Houston Traffic Office is an off-line office, because the Rock Island Telegraphers' Agreement does not cover off-line offices where leased equipment and circuits are used, because employes of our Traffic Office at Houston are not performing work to the detriment of any Rock Island telegraphers, because Houston employes operate the teletypewriter in the same manner as employes at other off-line offices, because delivery of communications of record to a Rock Island telegrapher for transmission does not constitute a monopoly possession of telegraphers, the Carrier has declined this claim and respectfully requests your Board to do likewise.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier maintains freight and passenger offices in Houston, Texas. Carrier's trains run over lines of the Joint Texas Division of the Chicago, Rock Island and Pacific Railroad Company and the Fort Worth and Denver Railway Company. This line was formerly the Trinity and Brazos Valley Railroad. The Chicago, Rock Island and Pacific Railroad Company and the Joint Texas Division are, for operational purposes, separate

and distinct Carriers. The Joint Texas Division has collective bargaining agreements with many railroad labor Organizations, including the Order of Railroad Telegraphers. The employes of the Joint Texas Division represented by the Organization "handle the dispatching, telegraphing, switching, etc., in connection with the movement of Carrier's traffic over Joint Texas Division tracks."

Prior to 1948, telegraphic communications for the Carrier's freight and traffic offices in Houston were handled by Joint Texas Division telegraphers who were represented by the Organization and by clerical employes who used the mails and telephone to communicate the instructions. In December, 1948, the Carrier leased a teletype circuit from the Western Union Company. This line was between the Traffic Department at Houston and the relay office at Fort Worth, Texas. At that time the Western Union Company furnished the machines and the circuit. Clerical employes operated the teletype machine. In 1953 the teletype machine was moved into the Carrier's Passenger Traffic Office at Houston. Again, the machine continued to be operated by clerks not represented by the Organization. It was not until August 19, 1953, that the General Chairman wrote the Carrier requesting "that a printer position be established and bulletined under the Telegraphers' Agreement to employes we represent on the old Southern Seniority District . . ." The letter of August 19, 1953, continued: "If this request is declined, please consider this letter as claim, retroactive thirty days prior to the date hereof, in behalf of the senior idle telegrapher on the Southern Division for 8 hours daily at the prevailing rate, on a continuing basis until the violation ceases."

The Carrier having declined the request to establish and bulletin a printer position, the Organization proceeded to process the Claim now before this Board.

A notice of third party interest was mailed to the Brotherhood of Railway and Steamship Clerks by the Secretary of this Board on February 9, 1962. On February 13, 1962, the Brotherhood of Railway and Steamship Clerks replied disclaiming any interest in the dispute before this Board.

We need not discuss in detail the Carrier's position that "the claim is indefinite and vague in that it is for unnamed employes whose status is unknown to the Division." Suffice it to say that the unnamed employes are readily ascertainable and further that the Carrier failed to raise this jurisdictional issue on the property. The Awards cited by the Carrier are not applicable and can easily be distinguished. The many Awards of this Board upholding the validity of a claim such as this are well known to the parties. It is preferable that the claim be resolved on the merits.

Rule 1 of the Agreement recognizes that "Printer and Teletype Operators" are within the scope covered by that Agreement. There is no dispute that a clerk had operated the teletype machine in the Carrier's Traffic Department Office in Houston from December 1948 until 1953 and in the Carrier's Passenger Traffic Office since 1953. The clerks are not covered by the Agreement.

The Organization has cited several Awards which hold that the Agreement covers the operation of teletype machines in a commercial office "not located physically on the railroad." In Award 5410 (Donaldson) the Board said:

> "The Carrier further contends that because telegraphers have never been used in traffic offices, that the contract was never intended to cover such locations. In Award 2693 we held that it is the nature

> of the work and not the place of its performance which determines to whom the work belongs. Here the justification for the introduction of telegraphers into the Traffic Department first occurred when the mechanical message machine was installed in that office in 1947. This Agreement does not specify any certain place of performance in respect to non-local messages. If the parties intended to restrict use of mechanical message machine operators under the Telegraphers' Agreement to on-line points not within one terminal, the scope rule would have been the place to express the interest."

In that case, however, the Carrier employed telegraphers represented by the Organization for on-the-line communication. This is not so here. On-the-line telegraphers in Houston represented by the Organization are employed by the Joint Texas Division which has an Agreement with the Organization.

Further, we held in Award 5410 that the Scope Rule "is spelled out in clear, unambiguous language . . ." and that it is not necessary to "look to the character of the work rather than the method of performing it . . ." In the Agreement before us the Scope Rule covers "Printer and Teletype Operators" but it is not so clear and unambiguous that we can rule that it per se covers all such work. We need to look into the character of the work and the practice, if any, established by the parties.

Award 6967 (Carter) cited by the Organization is not precisely in point and is not relevant to the issue here involved.

The facts in Award 9753 (LaDriere) are also different from those in this case. There, the Carrier operated all telegraphic communications from the office in the Union Station. Later the Carrier installed a teletype machine in the Traffic Office in downtown Spokane. The Board held that under these facts the Organization was entitled to represent the teletype machine operator. The Board also held that:

> ". . . where the scope rule lists positions, rather than work, it is necessary to look to past practice, tradition and custom to determine what work inures exclusively to employes covered by the Agreement."

There is no disagreement with the Organization's contention that teletype machine operators and printers are covered by the Scope Rule and that clerks may not replace telegraphers when such automatic machines are installed. Awards 9988 (Begley), 10192 (Begley) and 864 (DeVane). In the case now before this Board, clerks did not replace telegraphers. The Carrier had no Agreement with the Organization covering telegraphers at Houston. Award 4516 (Carter) cited by the Organization is not to the point and does not deal with the question here involved.

The first consideration of the Board is to determine work coverage under the Scope Rule. Rule 1 of the Agreement merely lists the classes of employes covered. It does not define or describe the work. We have consistently held that under those circumstances that practice, custom and tradition determine whether the work is covered. In Award 6824 (Shake) we said:

> "Since the Scope Rule of the effective Agreement is general in character and does not undertake to enumerate functions embraced therein, the Claimants' right to the work which they contend belonged exclusively to them must be resolved from a consideration of tradition,

historical practice and custom; and that issue the burden of proof rests upon the employes."

For similar rulings see Awards 9956, 9953 (LaDriere), 9502, 7976, 7070 (Elkouri), 9343 (Begley), 9244, 9204 (Stone), 883[2] (McMahon), 8793 (Daugherty) and 7953 (Cluster).

It is not enough that the Organization show that employes covered by the Agreement have performed similar work. The Organization must show that such employes have exclusively performed such work. See Awards 9963 (Weston), 9565 (Rose), 9551 (Bernstein), 9609 (Rose), 9261, 8065 (McCoy) and 6359 (McMahon).

In Award 9565 the question the Board had to decide was whether work on a car washing machine belonged to employes represented by the Brotherhood of Maintenance of Way Employes. The Carrier contended that since the installation of the machine, it had been operated by employes covered in an Agreement with the Motive Power and Car Department. The Board said:

> "In this posture of the record, we cannot say that the evidence establishes that the Water Supply employes have traditionally and historically performed all repair work, or the claimed work, on the car washing machine involved in this claim. Accordingly, the claim must be denied."

Similarly, in Award 9609 (Rose) the issue was whether the loading and disposal of dirt and debris was exclusive maintenance of way work. We held that employes not covered by the Agreement with the Brotherhood of Maintenance of Way Employes had done the work and that it was, therefore, not exclusively their work.

The evidence in the record shows that employes represented by the Organization never worked as a teletype machine operator in Carrier's Passenger or Traffic Office in Houston. The installation of the teletype machine did not deprive any telegrapher of work in Houston. The teletype machine was operated by a clerk in Houston for nearly five years before the Organization requested the right to represent the employe operating the teletype machine. Unquestionably, a clerk could not replace a telegrapher when the teletype machine was installed. If that had been the case this Board would have followed Awards 5410, 6967 and 9753 previously discussed. The fact is, however, that prior to the installation of the teletype machine, similar communication work was performed by employes covered by an Agreement between the Organization and the Joint Texas Division and not with this Carrier.

The evidence in the record also shows that the Carrier has Passenger and Traffic Offices in many cities throughout the United States wherein the Carrier has no lines and to which it directly carries no passengers or freight. In many of these cities the Carrier has similar teletype machines which are also operated by clerks. Nowhere does the Organization show any claim to such similar work in those cities. Such offices are located at Boston, Atlanta, New York, Toronto, Washington and Los Angeles. In Los Angeles, the Carrier's trains operate over the lines of the Southern Pacific Railroad, yet the teletype machine in the Carrier's Traffic Office in that city has been operated by a clerk for many years.

The Organization argues that the situation in Houston is the same as in Minneapolis, Omaha, Denver, St. Louis and Kansas City. In each of these

cities the Carrier operates its own line carrying passengers and freight. This is not so in Houston. In addition, it shows that teletype machine operators are not exclusively within the jurisdiction of the Organization.

It is the Organization's position there is sufficient corporate interrelationship between the Carrier and other railroads operating in Houston to establish the identity of this Carrier as an on-the-line Carrier. If that is so why does the Organization have an Agreement with the Joint Texas Division to cover employes represented by this Organization? Irrespective of any financial and corporate controls exercised by the Carrier, the Joint Texas Division is, for our purposes, a separate and distinct entity.

This is confirmed by Docket TE-9149 which was before this Board. The Organization had filed a claim against Joint Texas Division of Chicago, Rock Island and Pacific Railroad Company and Fort Worth and Denver Railway Company alleging that the Carrier abolished the position of clerk-telegrapher at Houston on July 5, 1955, and transferred the work to the "telegraph office operated by and manned by employes of the Houston Belt and Terminal Railway. In the Ex Parte Submission in Docket TE-9149, the Organization said:

> "The Carrier involved in the instant dispute was once known as the Burlington-Rock Island Railroad Company, and the Burlington-Rock Island Railroad Company still has a corporate existence; however, the physical property is under a joint lease to the Chicago, Rock Island and Pacific Railroad Company and the Colorado and Southern Railway Company. The joint lessees operate under the name of 'Joint Texas Division of Chicago, Rock Island and Pacific Railroad Company and Fort Worth and Denver Railway Company' which, for the purposes of handling this dispute under the provisions of the Railway Labor Act, is the Carrier."

Thus, the Organization recognizes the separate entity of the Joint Texas Division with whom it has an Agreement. Although the dispute in Docket TE-9149 was decided on a jurisdictional and procedural question, (Award 10251—McDermott), the fact is that the Organization attempted to avoid the abolishment of a clerk-telegrapher position at Houston by the Texas Joint Division.

On the basis of the evidence in the record we do not believe that the Carrier has violated any Agreement in Houston. If the Organization seeks to represent the printer and teletype operator in the Carrier's Traffic Office in Houston, it should negotiate for the work with the Carrier. It cannot accomplish this by proceedings before this Board.

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 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April 1962.