

Award No. 10918

Docket No. TE-9785

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, CHICAGO AND
ST. LOUIS RAILROAD COMPANY
(Wheeling and Lake Erie District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago and St. Louis Railroad (Wheeling and Lake Erie District) that:

1. Carrier violates and continues to violate the agreement between the parties when at Terminal Junction, Ohio, it requires or permits employes not covered by the agreement to "OS" trains and transmit other messages and/or reports.

2. Carrier shall compensate J. F. Battin, regularly assigned Telegrapher-Clerk at Terminal Junction, or his successor, a minimum call payment for each violation; commencing December 4, 1955 and continuing thereafter until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

At the time cause for this claim arose there was one position (Telegrapher-Clerk) under the Telegraphers' Agreement at Terminal Junction. Assigned hours 6:00 p.m. to 2:00 a.m. (one hour meal period) assigned rest days Tuesday and Wednesday, relieved on rest days.

Terminal Junction is the eastern terminal of the district. When Eastward trains arrive at this station during hours that the telegrapher is off duty a yard clerk "O-es" the train reporting the time of arrival, the number of loads, empties and the tonnage on arrival, the number of loads, empties and tonnage handled during the trip and the time the engine went on dock. This is recorded on the train dispatcher's train sheet. This report is transmitted by use of telephone to the Agent-Telegrapher at Yorkville Mondays through Fridays, and to the Agent-Telegrapher at Warrenton on Saturdays and Sundays. It is relayed or re-transmitted to the train dispatcher.

As stated in the above rule, it is not the disposition of the Carrier to "displace" a telegrapher by having others perform certain work. No employe has been displaced in this case. As set forth above, the only telegrapher position at Terminal Jct., the second trick position, was established over 40 years ago and still exists at the present time. The above rule has been in the basic agreement without change since its inception in 1926, during which period the agreement was revised on two occasions. During this period also, the telegrapher position involved never participated in the work forming the basis of this claim.

The 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: At the outset we should note the contention of the Carrier that there is a variance between the claim as presented on the property and as here. While there is a variance, the difference in the wording does not change the nature of the claim. The Carrier has not been misled as to the issue confronting it.

The submission shows that a yard clerk, an employe not under the Telegraphers Agreement, at hours when the regularly assigned Telegrapher is off duty, reports to an operator at nearby stations the arrival of trains, number of loads and empties and the tonnage on arrival, the number of loads, empties and tonnage handled during the trip and the time the engine went on dock. This information is relayed by an operator to the train dispatcher. It is the contention of the Claimant that when this work is so performed the Carrier is violating the Agreement. The reason given is that this is work reserved to employes under the Telegraphers Agreement and they cite Rule 1, The Scope Rule.

The Scope Rule on this property and on most others had its genesis in the U. S. Railroad Administration and first appeared in Agreement between these parties in the July 1, 1919 Agreement. It has remained practically unchanged through several contract renegotiations. It enumerates the positions covered by the Agreement. It does not define the work; nor does any provision of the Agreement do this. In order, therefore, to support the contention that the Claimant has exclusive right to the work, the subject of this claim, resort must be had to tradition, historical practice and custom; the burden of proof being on the party claiming the work (Award 6824).

The Carrier contends that, contrary to having been exclusively the work of Telegraphers, the tradition, past practice and custom has established that this work is not exclusively reserved to Telegraphers. In the General Superintendent's letter of July 31, 1956, to the General Chairman it was asserted that "practices of such nature (i.e The work here defined) have existed extensively for many years." In the submission the assertion has been made that the practice of permitting others as well as Telegraphers to perform the work has existed for over 40 years. This has not been refuted.

Formerly the messages, were transmitted directly to the train dispatcher. Beginning in 1952, at the request of the Organization, the messages when not handled by the Telegrapher were transmitted to near-by Telegraphers. This claim was initiated in February 1956.

Since the advent of the Scope Rule, in the Telegraphers Agreement (July 1, 1919) there have been 4 revisions of the collective bargaining agreement but the Scope Rule, except for minor changes has remained untouched. In 1947 an attempt by the Organization to amend the Scope Rule was made. The proposal if adopted would have covered the situation now before the Board. It was not agreed to.

All of these factors: the undenied assertion of past practice, the absence of any restrictive amendments in the Scope Rule when the Agreements were renegotiated, the specific but unsuccessful effort to cover into the agreement the work here sought, are persuasive that the Scope Rule in the current agreement does not give the Telegraphers the exclusive right to perform the work hereinabove described.

Nevertheless, it is urged that Award 10356 which involved the same parties as here is controlling. But an examination of the record in that case shows that that claim was based on a trainman telephoning the dispatcher an "in the clear" report. That is not the basis of the claim here. We believe that Award 7825 parallels the situation here and should be given great weight.

As we have found that on this property the Scope Rule does not reserve to employes under the Telegraphers Agreement the exclusive right to the work the subject of this claim, we must conclude that the Carrier did not violate the Agreement as alleged, and therefore the claim should 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 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 20th day of November 1962.