

Award No. 12235
Docket No. TE-10603

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**JOINT TEXAS DIVISION of Chicago, Rock Island and Pacific
Railroad Company — Fort Worth and Denver Railway
Company (Burlington-Rock Island Railroad Company)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Joint Texas Division of Chicago, Rock Island & Pacific Railroad Company and Ft. Worth & Denver Railway Company that:

1. Carrier violates and continues to violate the agreement between the parties when it requires or permits train dispatchers, employees not covered by the agreement, to perform the work of printer operators (punching, transmitting or receiving) from 4:00 P.M. to 7:00 A.M. each day at Teague, Texas.

2. Carrier shall compensate the two senior idle employees, extra preferred, under the agreement, in the amount of a day's pay (one for each eight-hour shift) on each day the violation occurs beginning March 1, 1957 and continuing thereafter until the violation is corrected.

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

Teague, Texas is a station on this Carrier's lines and is a division point where the offices of the Superintendent and the Chief Train Dispatcher are located. At this point the Carrier maintains its train dispatching forces with round-the-clock service seven days per week.

There is a position of Agent (now non-telegraph agent) under the agreement at Teague with which we are not concerned in the instant dispute. There is also a telegraph office located in the same building as the train dispatcher's office. For a number of years there were two positions under the Telegraphers' Agreement in this telegraph office, one day shift and one night shift, which performed all the work covered by the agreement. This telegraph office was once in the same room with the train dispatchers; when printer (teletypes)

would have warning to refrain from a cash outlay for additional facilities of the same kind until a settlement was reached.

The failure of the Petitioner to comply with Rule 35(a) directs the dismissal of this case. If this dispute should reach consideration as to merits, then for reasons advanced, it is entirely without rule support, and the Board is requested to deny it in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue in this dispute is: does the Scope Rule preclude the train dispatchers at Teague, Texas, from using a teletype machine during the hours when no telegrapher is assigned to operate it for communication purposes.

We find the Scope Rule cited is general in character and does not delineate or describe work; it simply lists the classes of employees covered. Therefore, as applied to the facts in the instant dispute, the Rule, standing alone, does not confer exclusively upon the telegraphers in the operation of teletype machines. We must therefore look to custom and practice to determine whether or not telegraphers have exclusively performed communication work at Teague.

It is uncontroverted that from the establishment of the train dispatcher's office at Teague, over 50 years ago, the latter have been performing communication work at Teague when no telegrapher is on duty. It is shown these train dispatchers over the years have used Morse code and the telephone in the performance of this service, and the Organization cannot now be heard to complain of the use by the train dispatchers of more modern devices whose operation is not reserved to the telegraphers.

On the factual situation we are unable to find the Agreement has been violated and perforce we must find that a sustaining award is not merited.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 20th day of February 1964.