

Award No. 12484
Docket No. TE-9967

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, 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 violated, and continues to violate, the agreement between the parties hereto when, effective September 1, 1956, it declared the Agent-Telegrapher position at Butterfield, Arkansas, abolished, and transferred all of the work of that position to the supervisory agency at Malvern, Arkansas, a position not within the scope of the said agreement;
2. Carrier shall be required by appropriate award and order of your Board;
 - (a) To reinstate the Agent-Telegrapher position at Butterfield, Arkansas, at the rate of pay established therefor by the parties hereto;
 - (b) To restore the former regularly assigned incumbent, L. M. Booten, to the said position if he so elects or, if not, to advertise the reinstated position in accordance with bulletin rules of the said agreement;
 - (c) To reimburse L. M. Booten for all time or wages lost, plus expenses incurred, as a result of his improperly enforced move from Butterfield, Arkansas;
 - (d) To pay the senior idle telegrapher (extra in preference), on the seniority district involved, eight (8) hours daily at the Butterfield rate of pay for each day of violation;
 - (e) To reimburse all other employees adversely affected, for any loss of wages or expenses incurred, by the improper abolishment of the Butterfield position.

when no work exists there for him to perform. Certainly, no such situation was even remotely suggested or contemplated by the Scope Rule or any other rule of the applicable Telegraphers' Agreement.

The findings of the Arkansas Public Service Commission are competent evidence to show that the duties assigned to Malvern which were discontinued at Butterfield are concurrent with the abolishment of the positions and there has been no transfer of work characterizing the duties of telegraphic service employees to employees outside of the scope of the Telegraphers' Agreement.

Because neither the facts in the case nor the applicable agreement support the employees' allegation that "all the work of that (Butterfield) position" was transferred to "... a position not within the scope of said agreement. . . .", we respectfully request your Honorable Board to deny the claim of the employees.

OPINION OF BOARD: The facts are not in dispute. Prior to 1955, at Butterfield, Arkansas there were assigned positions for a clerk, and an Agent-Telegrapher. About March 26, 1955 the Butterfield Clerical position was moved to Malvern, Arkansas, about 5 miles south. The work was placed under the supervision of the Supervisory (appointive) Agent at Malvern, a position specifically excluded from the Telegrapher's Contract pursuant to Memorandum D, which reads:

"MEMORANDUM 'D'

Chicago, Ill., August 1, 1947

SUPERVISORY AGENCIES

None of the provisions of the master agreement between the Carrier and The Order of Railroad Telegraphers shall apply to agency positions nor to an employee while holding such position at the following points:"

Malvern was listed in Group 1(c) following the above quoted Memorandum D.

As of September 1, 1956, the Agent Telegrapher's position at Butterfield was abolished, and the station closed. Thereafter, the Carrier provided service at Butterfield by having the Clerk at Malvern, drive to Butterfield each day for the purpose of checking the yard and signing bills of lading. This clerk was under the supervision of the supervisory agent at Malvern.

The position of Agent-Telegrapher at Butterfield had been in existence since 1905. The Contract, at page 91, provides a pay rate for the position of Agent-Telegrapher at Butterfield. There is no question that the business of the Carrier, over the rails at Butterfield, was undiminished, and of substantial volume. The station was closed however, and the position abolished, for which this Claim is made.

The work currently being performed at Butterfield is not exclusively work of Telegraphers. There is no work remaining at Butterfield that is exclusively work of Telegraphers. Employees cite Award 6204 (Shake), and other awards to sustain the principal that a position may not be abolished so long as the work which caused its creation in the first place, is still required to be performed. The principal is sound, but the facts of 6204 are quite different than those with which we are here concerned. In 6204, it was contended the Tele-

rapher duties were transferred to Red Key, thus the work remained in existence. Here the Telegrapher duties were abolished, and the work no longer required to be performed. As of March 26, 1955 the Clerk at Malvern was instructed to drive daily to Butterfield, wait at the station for bills of lading, sign the same, and perform other work. (Employee's submission—record 5). These are the only duties now performed at Butterfield. The work of the Agent-Telegrapher, abolished September 1, 1956, no longer exists nor has it been transferred to any other point or employee.

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 has not been 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 May 1964.

CONCURRING OPINION
AWARD 12484
DOCKET TE-9967
Referee Arthur Sempliner

We concur with the Opinion in denying the claim, but cannot agree that Award 6204—Shake, states a sound principle as it has been overruled by subsequent awards of this Division.

W. M. Roberts
G. L. Naylor
R. A. DeRossett
R. E. Black
W. F. Euker