

Award No. 12518

Docket No. TE-10648

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Joseph S. Kane, Referee

(Supplemental)

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD
(Western District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Western District, that:

1. Carrier violated Articles 1 and 27 of the Agreement between the parties when, starting on August 6, 1957, and continuing daily until December 30, 1957, it manned a communication station at Fairview remote interlocker, shown in the working Time Table as FR 33/100ths miles East of Fairview Station, Pennsylvania, with employees not covered by the Telegraphers' Agreement and manned the communication station at FR around-the-clock, 24 hours a day, 7 days a week, and failed and refused to assign employees covered by the Telegraphers' Agreement to perform the communication work which was required.

2. Carrier shall compensate J. G. Sampson, W. F. Gerould, F. J. Droast, for one day's pay each, for each day starting August 6 and ending December 30, 1957.

EMPLOYEES' STATEMENT OF FACTS: On August 6, 1957, the Carrier assigned employees who were not covered by the Telegraphers' Agreement to perform the necessary telephone communication work at FR Office, Fairview, Pennsylvania. The communications were of record and were required in connection with an automatic electronic hot journal detector placed in operation at FR Office on that date. Each time a train passed FR Office the hot journal detector would indicate on a graph recorder whether or not there was a journal in the train with a higher than normal temperature. When such indications were recorded on the graph, the Carrier required an immediate report of the record to be transmitted to Wesleyville Tower, which is located 14.45 miles east of FR, by means of the telephone. Employees at FR thus performed the work of a telephone operator or clerk-telephoner classification which is shown in Article 1, Scope Rule of the Telegraphers' Agreement. The

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This suggested modification of the Rules was not acceptable to the Carrier, and it is not within the competency of this Board to make or modify rules for the parties."

See also Third Division Award Nos. 7953, 7861, 7770 and 6416.

Therefore, the Carrier submits that awards of the Third Division, NRAB support the Carrier's position that there is no merit to this claim and it should be denied.

CONCLUSION

The Carrier has shown that:

- (1) This dispute should be dismissed for non-compliance with the Rules of the Third Division.
- (2) Notice of this dispute should be given to affected employees before consideration of the merits by the Third Division.
- (3) Communication work involved in this dispute is not work reserved exclusively to the Telegraphers by their agreement.
- (4) Awards of the Third Division, NRAB support the position of the Carrier.
- (5) This claim is without merit and should be denied.

OPINION OF BOARD: This dispute arose as the result of the Carrier installing testing, and communicating results obtained from a Servo Hot Box Detector by telephone to the train dispatcher. The incident took place at Fairview remote interlocker on June 15, 1957, to December 30, 1957. The device recorded journal temperatures (hot boxes) automatically while a train was in motion. The device is attached to the track and connected by cable to an electronic cabinet mounted in a signal case, and a graphic recording device records on a tape, hot boxes, if any, while the train is in motion.

An employee available, read the tape, and if a hot box was indicated, advised, by use of the telephone, the tower operator at W.V. Tower, Wesleyville, Pennsylvania, of the hot box and its location in the train. The recorder is now being maintained by employees, on their regular tour of duty, clerks, telegraphers, dispatchers.

The Claimants filed a claim on September 13, 1957, alleging that employees not covered by the Telegrapher's Agreement were performing the work of a telephone operator (except switchboard operator) and also performing the work of clerk-telephoner, in violation of the Telegrapher's Agreement.

It was the position of the Claimant that Article 1, of the scope rule required the Carrier to assign this work, of transmitting information obtained from the tape recording to employees covered by the Telegrapher's Agreement as this information was a communication of record and such work properly belonged to employees working under the Telegrapher's Agreement.

In addition Article 27 (a) and (k) were alleged to be violated. This Article is entitled Vacancies and New Positions and the work assignments were not made in compliance with this Article.

The following rules are alleged to have been violated.

"Article 1 — Scope

(a) This agreement applies to wire chiefs, operators of mechanical machines used for transmitting or receiving communications from one city to another, agents, agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, telegrapher-levermen, telephoner-levermen, telegraphers, telephone-operators (except switchboard operators), block operators, clerk-telegraphers, clerk-telephoners, telegrapher-switchtenders, telephoner-switchtenders, and others whose positions are shown in the attached wage scale, hereinafter termed employees.

(b) Employees performing service in the classes specified in the preceding paragraph shall be classified in accordance therewith.

(c) All employees herein specified shall be paid on the hourly basis except as otherwise designated in the Wage Scale."

"Article 27 — Vacancies, New Positions

(a) Except as provided in paragraph (i) of this article, permanent vacancies or new positions shall be bulletined for 10 days to all employees covered by this agreement on that seniority district with copy to the General Chairman. When two or more vacancies or new positions are bulletined employees shall have the right to apply for any or all, stating preference.

* * * * *

(k) When a temporary position is created to continue more than 30 days, it will be advertised and filled in accordance with paragraphs (a), (b), (c), (d) and (e) of this article. When position is abolished, employee will return to his regularly assigned position subject to the application of seniority rules, or may displace a junior employee holding temporary position or vacancy. The regularly assigned position of the successful bidder and those affected thereby will be considered as temporary vacancies while the temporary position is being filled. A temporary position is one which will continue for a period of not more than 6 months with the privilege of extension when agreed upon by Local Chairman and Superintendent."

The Carrier contended that this work was not reserved exclusively to telegraphers. The scope rule merely lists the positions which are covered by and subject to the Agreement. The scope rule does not describe the work that is to be done by the employee under the scope rule. Hence, it is necessary to look to past practice and custom to determine the communication work that is exclusively reserved to the Telegraphers by their scope rule. It was further the position of the Carrier that the Servo Hot Box Detector was a new machine and the work in connection therewith was not exclusively the work of any craft.

An examination of the record fails to reveal what work was actually performed by employees, not covered by the Telegrapher's Agreement, when transmitting messages concerning information obtained from the tape record-

ings. Furthermore, no evidence has been submitted in the record to show that the communications were train orders or communications of record. Such evidence is necessary to support the contentions of the claimant.

Thus, this Board is of the opinion that the Claimants have failed to establish by a preponderance of the evidence that Article 1, the Scope Rule and Article 27, (a) and (k) Vacancies, and New Positions of the Telegrapher's Agreement was violated.

Thus, the contentions of the Carrier have been well taken.

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

That the parties waived oral hearings;

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 21st day of May 1964.