

Award No. 12665
Docket No. TE-11494

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(TEXAS AND NEW ORLEANS RAILROAD COMPANY)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Lines in Texas & Louisiana — Texas & New Orleans Railroad, that:

1. Carrier violated the terms of the agreement between the parties when on July 26 and 27, 1958, and continuing thereafter on Saturday and Sunday of each week, it required and permitted employees not covered by said agreement to perform the regular duties of the Telegrapher-Clerk at New Iberia, thereby improperly relieving such Telegrapher-Clerk on his rest days, and

2. Carrier violated the terms of the agreement between the parties when on July 26 and 27, 1958, and continuing thereafter on Saturday and Sunday each week it required and permitted employees not covered by said agreement to perform the regular duties of Telegrapher-Clerk at New Iberia, thereby improperly relieving such Telegrapher-Clerk on his assigned rest days, and

3. Telegrapher-Clerk W. J. Eastin be compensated for each day the violation exists at the rate of time and one-half with a minimum of eight hours for each day; or if Telegrapher-Clerk Eastin was not available, then the senior idle Telegrapher-Clerk be compensated for eight pro-rata hours for each rest day on which Telegrapher-Clerk Eastin is improperly relieved.

EMPLOYEES' STATEMENT OF FACTS: New Iberia, Louisiana is located on the Carrier's Lafayette district 125 miles west of New Orleans. A position of "Telegrapher-Clerk" at this point has been covered by the Telegraphers' agreement for many, many years. It is listed in the Wage Scale (Rule 37 of the agreement, effective December 1, 1946, since amended) as follows:

"New Iberia Telegrapher-Clerk \$1.09½" (per hour)

The rate of pay has since been revised upward.

by the Board, but they have in the past realized and accepted the fact that when work was put on the telegrapher's job of a clerical nature to fill it out, that when the telegrapher's functions were changed and the position discontinued, the clerical work such as might have remained was returned to the clerks under the Clerks' Agreement or to some other employe under the Telegraphers' Agreement if they had some idle time.

The Carrier affirmatively states that all the remaining work coming within the duties of telegraphers in connection with communications, train orders, handling of messages and other similar work was performed by telegraphers at the same station at another location; namely, the West Tower.

The Carrier affirmatively states that the position was continued as long as there was any necessity for the position, and after it declined to such extent, the position was discontinued on September 27, 1959. There is nothing in the Agreement that requires the Carrier to retain a single position of telegrapher-clerk on the system, let alone two sets of telegrapher-clerks at New Iberia.

The Carrier further asserts that all the remaining duties subject to the Telegraphers' Agreement have been turned over to telegraphers or employes under the Telegraphers' Agreement since that date.

The Carrier respectfully requests that the Board deny this claim in all respects as being unjustified and not in accordance with the Agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: In the passenger station at New Iberia, Louisiana, Carrier maintained a telegrapher clerk who occupied a seven-day position. The work days were Tuesday through Saturday with rest days on Sunday and Monday. The rest days were worked by a regular relief employe. On July 21, 1958 the position was reduced to a five-day assignment, Monday through Friday, and the rest days were changed to Saturday and Sunday. At this time also the two day relief assignment was abolished. Mr. W. J. Eastin, the regular occupant of this position, was given a two hour call on Saturday morning. In addition, clerical employes not covered by the Telegraphers' Agreement performed work on Saturday and Sunday.

Organization makes claim that when Mr. Eastin was assigned the two hour call on Saturday, the remainder of the work for Saturday and Sunday was improperly transferred to employes not subject to the Telegraphers' Agreement. It argues that this work, on unassigned days and under Rule 9, Paragraph N, of the Memorandum of Agreement as revised and effective September 1, 1949, should have been performed by an available extra or by an assigned employe who would otherwise not have 40 hours of work that week or by the regular employe. It also asserts that the work in question rightfully belongs to the telegrapher clerk in view of the fact that this work has been performed by members of this craft continuously since 1900. It maintains that although there was a change from a seven-day to a five-day position, clerical work attaching to the telegrapher clerk remained to be performed. The discontinuance of the assignment of a relief telegrapher clerk did not justify the transfer of telegrapher clerk's work to clerk employes not covered by the Agreement. Moreover, it urges that as the employe of a one-man station, the telegrapher owns and is entitled to all of the station work at New Iberia.

Organization and Carrier have presented conflicting evidence as to what type of work was performed by the clerks on Saturday after the two-day relief assignment was abolished. Organization insists that the clerks on Saturday and Sunday did the identical work that Mr. Eastin did Monday through Friday; whereas Carrier insists that basically the only work which the clerk performed was head-end work which Organization does not claim belonged within the telegrapher craft.

We note that for a number of years assigned clerks did head-end work and other specified duties as selling tickets, work not exclusively belonging to the telegraphers. Evidence points up that little work remained for the telegrapher clerks because of the decline in business and reduction of passenger trains. This is a more persuasive reason for the abolition of the relief employe's position than Organization's claim that Carrier abolished the position but the work remained and was transferred to the clerks. Carrier recognized its responsibility of assigning that work which belonged to the telegrapher clerk by giving the incumbent a two hour call on Saturday morning. Eventually a further decline in business led to the complete elimination of the position of telegrapher clerk.

The conflicting evidence of the parties also leaves doubt as to whether New Iberia was a one man station. Although Organization maintains that New Iberia was a one man station in which the work for about 60 years was done by the telegrapher clerk and, therefore, belonged to him exclusively, Carrier offers evidence that clerks had been assigned on a regular basis for a similar length of time to sell tickets as well as to perform head-end work. Since we cannot conclude that New Iberia is a one man station we also cannot conclude that the telegrapher clerk owns all the station work. The ticket selling and head-end work that clerks performed demonstrate that telegrapher clerk work at this station has not been exclusively that of the telegrapher.

In view of the conflicting evidence on crucial issues, we do not find enough clear and convincing proof to sustain the claim that Carrier improperly transferred work to clerks. We, therefore, hold that the Agreement of the parties was not violated.

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 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

The Agreement of the parties 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 19th day of June 1964.