

Award No. 12757

Docket No. TE-10498

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway that:

1. Carrier violated Telegraphers' Agreement when on April 1, 1957, it abolished Clerk-Telegrapher's position at Seneca, South Carolina, effective after tour of duty Wednesday, April 3, 1957, and caused, required or permitted duties performed by Clerk-Telegrapher D. C. Ellenburg prior to April 3, 1957, to be transferred to employes not covered by the Telegraphers' Agreement.

2. Carrier shall compensate Telegrapher D. C. Ellenburg one day's pay (8 hours) at pro-rata rate for each day so long as this violation continues. Carrier shall also compensate any employe under the Telegraphers' Agreement, Charlotte seniority district, for time lost as a result of this violation.

EMPLOYEES' STATEMENT OF FACTS: Before April 4, 1957, the agency force at Seneca, South Carolina, consisted of three employes: the Agent-Telegrapher, with assigned hours 8:00 A.M. to 5:00 P.M., with one hour meal period; the Clerk-Telegrapher, with assigned hours 10:00 A.M. to 6:00 P.M.; and a Cashier.

The position of Agent-Telegrapher performed the following work:

1. Making car records.
2. Making switch lists in part.
3. Working demurrage records.
4. Handling claims.
5. Handling overs and shorts on inbound and outbound billing.
6. Assist in billing outbound shipments.
7. General correspondence.
8. Selling tickets part time.

The occupant of the position of clerk-telegrapher existing at Seneca, S. C., prior to April 3, 1957, performed telegraph and clerical work. He was, therefore, properly classified as clerk-telegrapher and the Telegraphers' Agreement governed his hours of service and working conditions. However, when the telegraph duties disappeared and were no longer necessary to be performed, it was entirely proper that the position of clerk-telegrapher be abolished and position of general clerk be established, the occupant of same to perform the duties of clerical workers and machine operators, as referred to in Rule 2 of the Clerical Agreement.

Actually, when the telegraph duties disappeared and were no longer necessary to be performed, there ceased to be duties properly assignable to a clerk-telegrapher. To have retained the classification of clerk-telegrapher and required the occupant of that position to perform only clerical work would have been contrary to the Clerical Agreement. It would be contrary to the Telegraphers' Agreement to require a clerical worker to perform a combination of duties of telegrapher and clerk. Thus, when the telegraph duties disappeared, it was proper and in accordance with the terms of both agreements in evidence to abolish the position of clerk-telegrapher and create a position of general clerk, the occupant of the same to perform clerical work, such as billing freight inbound and outbound (by use of typewriter), handling demurrage, rating and routing freight, delivering freight and performing related duties. (See Exhibit A.) It is therefore crystal clear that, under the terms of the two agreements in evidence, there was no violation of the Telegraphers' Agreement and the claim which the ORT here attempts to assert is without any basis whatsoever.

The action taken in the instant case was in accordance with the former accepted and agreed to practice, as what was done here was the same as has always been done in similar situations throughout the years. That this was clearly the intention of the parties negotiating the agreement in evidence is reflected by the first paragraph of Rule 44 of the Telegraphers' Agreement, hereinabove quoted.

CONCLUSION

Carrier has shown that:

(a) Employees of the clerical class or craft are "involved"; therefore, as a prerequisite to the Board's taking jurisdiction, notice to employees of that class or craft is required before the Board can assume jurisdiction of the claim which the ORT here attempts to assert.

(b) The Telegraphers' Agreement has not been violated, as alleged, and the claim is not supported by any provision contained therein.

Under the circumstances, if, after notice to employees of the clerical class or craft is given, as required by law, the Board assumes jurisdiction and passes upon the merits of the claim, it cannot do other than make a denial award, for to do otherwise would be contrary to the terms of the two agreements here in evidence.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in the instant matter are not in dispute. Prior to April 3, 1957, the telegraph work which was required to

be performed at Seneca, South Carolina, made necessary the services of an agent-telegrapher and a clerk-telegrapher. A cashier was also employed at the agency, who was under the Clerks' Agreement. The telegraph work decreased to the extent that it was no longer required on the clerk-telegrapher position; effective April 3, 1957, the position of clerk-telegrapher was abolished, and the position of general clerk was created. Thereafter, the force consisted of an agent-telegrapher, a cashier and a general clerk. All the telegraph work was handled by the agent and strictly clerical work was performed by the clerks.

The Organization claims that the Carrier violated the Telegraphers' Agreement when the clerical work formerly performed by the clerk-telegrapher was assigned to clerks.

It should be noted that the Carrier's clerical employees, through their representative, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, were afforded an opportunity to be heard pursuant to Section 3, First (j) of the Railway Labor Act.

The Organization takes the position that the precise question here in dispute has been decided on at least two occasions in the past in Awards 4735 and 7409 and since its position was sustained in these two Awards and also in Award 6204 on a state of facts described as being analagous to the facts at bar, the instant claim should be sustained.

Award 4735 (Stone), in its pertinent part, states as follows:

"* * * On August 25, 1948, Carrier abolished the position of cashier telegrapher, created a new position under the title of general clerk, outside the Telegraphers' Agreement, and divided the work formerly assigned to the abolished position between the agent telegrapher and the newly created general clerk, giving to the former the telegraphic work and to the latter the cashier work. The reason for this change was not any change in the amount or nature of the work performed. * * *. The situation and rights of the parties are in essential respects the same as those determined by Award No. 4734 of this Division, and for reasons therein stated, this claim must be sustained." (Emphasis ours.)

Award 4734 (Stone) concerned itself with a situation similar to Award 4735 and like 4735 turns on at least one factual element, determinative of those cases and absent from the case at bar.

"It is admitted by both parties that the reason for the change here complained of was not any change in the amount or nature of work required, but rather Awards Nos. 2253 and 2254 of this Division, which Carrier considered as requiring it to assign the clerical work involved to an employe under the Clerks' Agreement." (Emphasis ours.)

The Carrier contends that telegraph work decreased to the extent that it was no longer required on the clerk-telegrapher position and, effective April 3, 1957, the position of clerk-telegrapher was abolished and the position of general clerk created. Thereafter, all the telegraph work was handled by the agent and strictly clerical work was performed by the clerks. The record supports the above Carrier contention and the Organization has not sought to controvert it, thus leaving it established as an admitted fact.

Since the emphasized facts in Awards in both 4734 and 4735 differ from the instant matter, it is clear that these cases are not apposite and cannot afford a precedent applicable to the case at bar.

The Carrier takes the further position that the action taken in this case was in accordance with former accepted and agreed to practices, was the same as has always been done in similar situations throughout the years, and was in accord with Rule 44 of the Agreement, first paragraph:

"This agreement supersedes and cancels all former agreements, but does not, except where rules are changed, alter former accepted and agreed to practices, working conditions or interpretations."

Carrier points out that the Organization nowhere disputes the Carrier's contentions with respect to the former accepted and agreed to practice and therefore said Carrier statements must be accepted as correct, and cites in support of this proposition Awards 9261, 6778, 11236, 6616, 8098 and numerous other awards to the same effect.

Award 7409 seems to turn on a long and established custom and practice of assigning such work at Palestine, Illinois, to a telegrapher. The long established practice of assigning work in the instant case is not only different from the facts in Award 7409, but appears to be directly in conformance with the Carrier's custom and past practice on this property.

Award 6204 explicitly states, " * * * This is not a case where the work incident to the positions had decreased to a point justifying its abolishment." The facts in the case at bar seem to involve precisely a situation where the work incident to the position did decrease to a point justifying its abolishment.

Our attention is called to the fact, which is not disputed, that the remaining telegraphic work was assigned to employees covered by the Telegraphers' Agreement.

Nor is there any issue raised by the Organization questioning the Carrier's right to abolish unnecessary positions or that the Carrier has a duty to operate the railroad efficiently and economically. These two concepts are so clear as to be judicially noticed, and consequently, they need no citations of authority to support them.

The real subject of this dispute is whether clerical work belongs to the Telegraphers' Organization by virtue of the Scope Rule. The said Scope Rule does not reserve clerical work to the employees covered by the Agreement. It does not define or describe any work; it merely lists the classes of employees. See Awards 10515, 10425, 10379, 10581, 10493, 10492, 10385, and 11812 to 11819, inclusive; 12699 and 12711, involving the same parties to the instant dispute. The Employees have made no showing that the work they claim here is exclusively reserved to them by the Agreement of the parties. Traditionally, telegraphers have been assigned clerical work to fill out their tours of duty when they are not occupied with telegraphic duties. See Awards 615 and 10301. Further, it is well settled by numerous decisions that telegraphers enjoy no right to the performance of clerical work. To the contrary, Award 6363 enunciates the following well accepted view that:

" * * * This Board has consistently held in many cases that when a position has been abolished, as here, and the remaining duties,

sometimes performed by telegraphers, are of a clerical nature, it cannot be said that such clerical duties belong exclusively to the Telegraphers, nor does the Scope Rule contain any such provision, nor does such right exist through custom and practice, where the major duties have been abolished and those remaining are of a clerical nature. See Awards 5719, 5318, as concurring with this reasoning."

To the same effect see Awards 5803, 7073, 5867, 8357, 8537, 8215, 8662, 8768, 9344, 9914 and 10970.

The Awards are legion in which the holding of this Division agrees with Award 10515 (Dolnick):

"It is not enough that the Organization show that employes covered by the Agreement have performed similar work. The Organization must show that such employes have exclusively performed such work. See Awards 9963 (Weston), 9565 (Rose), 9551 (Bernstein), 9606 (Rose), 9261, 8065 (McCoy) and 6359 (McMahon)."

Note especially the exhaustive opinion found in Award 11120 (Dolnick), which reviews and reiterates past Awards in an analagous situation to that presented by the instant case.

For the reasons set forth supra and in conformance with an overwhelming number of both old and recent well reasoned cases, the claim must 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

The Carrier did not violate its Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1964.