

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, 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 System, that:

(1) The Carrier violated and continues to violate the terms of the Agreement when on July 7, 1958, it declared abolished the position of Ticket Agent-Telegrapher at Concord, North Carolina without abolishing the work.

(2) The Carrier further violated said Agreement when on July 7, 1958 it declared abolished the position of Second Shift Clerk-Telegrapher at Concord, North Carolina without abolishing the work.

(3) The position of Ticket Agent-Telegrapher at Concord, North Carolina shall be restored to the Agreement and the work of said position and the former incumbent or his successor thereof shall be returned thereto.

(4) The position of Second Shift Clerk-Telegrapher at Concord, North Carolina shall be restored to the Agreement and the work of said position and the former incumbent or his successor thereof shall be returned thereto.

(5) Carrier shall reimburse Ticket Agent-Telegrapher J. C. Higgins or his successor for loss of any wages due to above abolishment.

(6) Carrier shall reimburse Second Shift Clerk-Telegrapher M. W. Cook or his successor for loss of any wages due to above abolishment.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement in effect between the parties with rates effective September 1, 1949 and rules revised as of September 1, 1949. Listed at page 71 of the Charlotte Division are the positions negotiated as follows:

"ConcordTicket Agent-Telegrapher
1 Clerk-Telegrapher"

Before July 6, 1958 the carrier had assigned a ticket agent-telegrapher and a clerk-telegrapher to the positions listed under the Agreement in the passenger station at Concord, North Carolina. In a separate freight building the carrier also had a freight agent who was not under the Telegraphers' Agreement, Mr. J. C. Higgins was the ticket agent-telegrapher at Concord in charge of the passenger station and Mr. M. W. Cook was the clerk-telegrapher

on the property, the Telegraphers' Local Chairman erroneously contended that in consolidating the freight and passenger facilities, the remaining clerical work of the abolished ticket agent-telegrapher position was assigned to the excepted supervisory agent. This certainly was not the case. There was already a supervisory agent at Concord. When the operations were consolidated under one roof, all positions at the consolidated station were placed under the immediate supervision and direction of the supervisory agent, the same as has been done at all other consolidated freight and passenger stations on the system. Moreover, as shown in carrier's Statement of Facts, between July and October 1958, the clerk-telegrapher, chief clerk, and general clerk (not the supervisory agent) performed the remaining clerical work. The clerk-telegrapher during this period also performed the small amount of remaining train order and telegraph work. After the change in operation of the switch local in 1958, when train order office was established at Kannapolis, there was no longer any need for a clerk-telegrapher at Concord.

As evidence of the established practice and the correctness of carrier's position under the effective Clerks' and Telegraphers' Agreements, in 1955 carrier consolidated its freight and passenger stations at Brunswick, Ga., under the jurisdiction of the excepted supervisory agent. The former ticket agent-telegrapher position (see page 87 of the printed Telegraphers' Agreement of September 1, 1949) was abolished and in lieu thereof a clerk-telegrapher position was established, because train order and telegraph work remained. Thus at Brunswick in 1955 and at Concord in 1958, the remaining positions at the consolidated freight and passenger stations were classified according to duties necessary to be performed.

Summarizing, carrier has shown that employees of the clerical class or craft are "involved" and as a prerequisite to the Board's taking jurisdiction, notice to employees represented by the Brotherhood of Railway Clerks is required before the Board can assume jurisdiction of the claim. Further, as to the merits, the evidence of record discloses that carrier's action was in accordance with the established practice, with the provisions of the existing Telegraphers and Clerks' Agreements, and with numerous decisions of the Third Division. For the reasons set forth herein, carrier respectfully requests that the claim be denied in its entirety.

(Exhibits not reproduced).

OPINION OF BOARD: Before July 8, 1958, at the Concord, North Carolina passenger station, Carrier maintained a ticket agent-telegrapher and a clerk-telegrapher who were covered by the Telegraphers' Agreement. In a separate freight building, Carrier also employed a freight agent who was not subject to the Telegraphers' Agreement.

Carrier abolished the positions of ticket agent-telegrapher and clerk-telegrapher on July 6, 1958 and established a new position of clerk-telegrapher on July 7, 1958. Then, effective July 8, Carrier combined the passenger and freight operations. Mr. C. M. Howard, freight agent, was placed in charge of the consolidated station. In addition to this supervisory agent, the station was now to be staffed by a clerk-telegrapher and a general clerk. After these positions were bulletined, Mr. J. C. Higgins, the former occupant of the abolished ticket agent-telegrapher position, exercised his seniority and was assigned to the position of clerk-telegrapher with the hours from 8:00 A. M. to 5:00 P. M. Because there was no applicants, the position of general clerk was not filled; and the work was performed by extra employees under the Telegraphers' Agreement. Upon Mr. Higgins' retirement on October 1, 1958, Car-

rier cancelled the position of clerk-telegrapher and then bulletined a position for a general clerk which was filled by an employee not subject to the Telegraphers' Agreement.

The Brotherhood contends that Carrier acted improperly in abolishing the positions of ticket agent-telegrapher and clerk-telegrapher and requests that Carrier reimburse Ticket Agent-Telegrapher J. C. Higgins or his successor and Clerk-Telegrapher M. W. Cook or her successor for the accumulated losses of any wages due to the abolishment of these positions for the period until their restoration.

The Brotherhood supports its position by application of the Scope Rule which names the positions of ticket agent-telegrapher and clerk-telegrapher to be within the Telegraphers' Agreement. It asserts that by reference to this listing, these employees have exclusive right to the performance of the clerical work. Moreover, it argues that the work formerly performed by the ticket agent-telegrapher was transferred to the freight agent, an employee outside of the Agreement. The craft of telegraphers, furthermore, it points out, performed all of the clerical work at Concord prior to July 6, 1958, a period of over thirty years. After the changes, the work remained the same with the same number of employees, who were not subject to the Telegraphers' Agreement. In effect, the Brotherhood alleges, there was an abolishment of positions without an abolishment of the work. The transfer of the work to the two general clerks involved a transfer of the same work from one craft to another. This arbitrary action, executed without negotiation, according to the Brotherhood, was an encroachment on the rights of the employees of the telegrapher craft.

A basic point of contention in this dispute is the Brotherhood's claim that clerical work performed by the ticket agent-telegrapher and the clerk-telegrapher belongs exclusively to the telegrapher craft under the Scope Rule. We find, as this Board has consistently held, that the Scope merely lists classes of employees covered by the Agreement. The Rule does not define or prescribe the work. Telegraphers have been assigned clerical work to fill out their tour of duty, but the performance of such duties does not mean that the clerical work is exclusive to telegraphers. When the telegraphy work disappeared at Concord and the clerk-telegrapher position was abolished, the remaining clerical work under the Scope Rule need not have been performed by telegraphers and properly could be assigned to employees not covered by the Telegraphers' Agreement. This position is consistent with Award Nos. 10515, 10581, 10493, 11812, and 12699.

Another aspect of the dispute concerns the question of whether Carrier replaced two positions in the telegrapher craft with two in the clerical classification and thereby encroached upon the rights of the telegrapher employees. The elimination of the position of ticket agent-telegrapher resulted from a reduction in train order work at Concord. For a short time after this position was abolished, Carrier still required some telegraphy at Concord for which it employed a clerk-telegrapher on the first shift. When Mr. Higgins retired on October 1, 1958, Carrier, acting upon the fact that train orders or telegraphy work had all but disappeared, abolished the position Mr. Higgins had occupied. Train order service, however, was required at Kannapolis, a small non-telegraphic station about eight miles north of Concord. The position of clerk-telegrapher was, therefore, established at that location and the position of general clerk there was abolished. At Concord a new position of general clerk was established to meet the remaining clerical needs such as selling tickets, handling reservations, and making out certain reports. In short, Kannapolis became a train order office while Concord no longer handled train

order messages. The record does not support the Brotherhood's contention that the work assigned to the general clerks at Concord was in nature and in amount the same as the work performed by the ticket agent-telegrapher and clerk-telegrapher. The work customarily recognized as telegraphy was diminished to such a point that the positions were abolished. This change was not arbitrary action which deprived members of the telegrapher craft of their seniority and their jobs. In fact, a new clerk-telegrapher position was established and a clerical position was abolished when the reverse situation at Kannapolis demanded such a change.

A further consideration is the question of whether the freight agent, an employe outside of the Agreement, took over the duties of the ticket agent-telegrapher. After the abolishment of the ticket agent-telegrapher position, the remaining train order and telegraphic work was assigned to the newly created clerk-telegrapher and the clerical work was performed by the clerk-telegrapher and the clerical staff. The record does not give evidence that the supervisory agent did the work of the ticket agent-telegrapher. He did, however, engage in supervisory activities, duties which he performed before the consolidation. When the passenger and freight operations were consolidated in one station, all positions were placed under the direction of this supervisory agent. Carrier exercised its managerial prerogative in determining the amount and the character of supervision it required. Furthermore, the Agreement does not grant the exclusive right of supervisory work to the telegrapher's craft.

The issues presented in this dispute have been reviewed in a line of Awards among which are Nos. 3606, 5014, 6204, 13074, 11120, and 12757. In these awards there is lack of unanimity of opinion. In the instant dispute we find the determining factor to be the disappearance of train order and telegraphy work, leaving only clerical duties which resulted in the abolition of telegrapher positions. Since these remaining clerical duties performed at the consolidated station are not exclusive to telegraphers, they may be performed by clerks.

For the above reasons, we hold the agreement was not violated.

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 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 29th day of January 1965.

DISSENT TO AWARD 13243. DOCKET TE-11721

I must register disagreement with the premise upon which the majority bases its conclusion that the agreement was not violated. The majority says:

"... In the instant dispute we find the determining factor to be the disappearance of train order and telegraphy work, leaving only clerical duties which resulted in the abolition of telegrapher positions. Since these remaining clerical duties performed at the consolidated station are not exclusive to telegraphers, they may be performed by clerks."

One minute after Award 13243 was adopted the same majority adopted Award 13244, involving the same parties and agreement, in which it held that "train order and telegraphy" work was not the exclusive province of telegraphers because of the "general" nature of the scope rule.

Thus by inconsistency the telegraphers are deprived of their rights in at least one of these cases. Such inconsistency seems to have become the fashion lately. If it continues it is certain to provoke revolt by the employees whose hard-won rights are being chipped away.

The majority, aside from its inconsistency, gave no value to the obvious fact that with a "general" scope rule it is the "positions" covered rather than abstract items of work that is the subject of the contract. The parties negotiated for the positions at Concord which were arbitrarily taken from coverage of the contract and given to employees under a different agreement who had not bargained for them.

I cannot escape the belief that in so disposing of this dispute the majority was more concerned with assisting the Carrier than in reaching a proper interpretation and application of the agreement that is supposed to be controlling.

Therefore, I dissent.

J. W. WHITEHOUSE
Labor Member