

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD
COMPANY (Wheeling and Lake Erie District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York, Chicago and St. Louis Railroad (Wheeling and Lake Erie District), that:

1. The Carrier violates the parties' Agreement when on July 2, 1958, it purportedly abolished the Second, Third and Relief Telegrapher positions at Adena, Ohio, while the work of the positions remained, and assigned the work of the nominally abolished positions in part to the occupant of the First Shift Telegrapher position by changing his hours of assignment, and in part to train service employees, and to employees on another railroad, none of whom are covered by the parties' Agreement.

2. The Carrier shall, because of the violation set out above, compensate G. E. Morris, regular occupant of the Second Shift Telegrapher's position; C. Zankoski, regular occupant of the Third Shift Telegrapher's position; and E. Starociak, regular occupant of Relief Position No. 9, all at Adena, a day's pay for each and every day commencing July 2, 1958, and so long thereafter as the violation continues, at the rate of the positions from which improperly displaced, in accordance with applicable rules. Also in accordance with Rule 11.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective February 1, 1951, as to rates of pay, and February 1, 1952 as to rules, and as amended.

At page 58 of said Agreement, under the captions "Location", "Position", and "Hourly Rate", is listed the positions existing at Adena, Ohio on the effective date of said Agreement. The listings are:

the guarantee rule (No. 10) and those who "were forced to displace to other positions" should be paid under the diversion rule (No. 11).

It is the Carrier's position that no rights accrued to the named claimants under either rule during the period here involved because of their having been formerly assigned to the positions in question, for the simple reason that such positions were abolished. Not "nominally", as the Employees allege, but in fact abolished. There was no "diversion". The claimants made a bonafide exercise of seniority.

The Carrier has shown that the abolishment of the positions here involved was not improper under the rules, that the work that could be said to have remained was performed by those rightfully entitled to do so, and that moreover no payments of any kind would in any case be due the named claimants. For these reasons the claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective July 2, 1958, Carrier abolished the second and third trick telegrapher positions and Relief Position No. 9 at Adena, Ohio. It also changed the hours of the first trick telegrapher position from 6:59 A. M. to 2:59 P. M. to 6:30 A. M. to 3:30 P. M. with a one hour meal period. In addition, Carrier transferred the handling of train orders to employees at the Pittsburgh Junction, about ten miles west of Adena. These telegraphers who are jointly maintained by Carrier and the Pittsburgh and West Virginia Railway are not covered by the Agreement.

The occupants of the three abolished positions claim that Carrier eliminated the positions without discontinuing the work and deprived them of their right to perform it. They argue that the hours of the first trick telegrapher were changed so that this employee performed thirty minutes of the work previously handled by the third trick telegrapher and thirty-one minutes of the work of the second trick telegrapher. They also contend that Carrier violated Rule 1 Scope and Rule 211 of Carrier's Operating Book of Rules when it required the first trick telegrapher to leave train orders on his desk to be picked up by train conductors while no operator was on duty. Furthermore, they maintain that Carrier's transfer of the handling of train orders from telegrapher employees at Adena to operators at Pittsburgh Junction, employees not covered by the Agreement, constitutes a violation of Rule 26.

In its denial Carrier emphasizes its right to abolish the position and asserts that the remaining work was performed by employees entitled to do it. Furthermore, it points out that if there is any basis for a claim, which it denies, the first trick telegrapher and not the former occupants of the abolished positions is the proper claimant.

Carrier abolished the positions because there was not sufficient work to continue them. In the absence of any prohibitions in the Agreement, Carrier had a right to take such action in the interest of efficient operation of its business. The rearrangement of the hours of the first trick telegrapher is not proof that this change was made to have the first trick telegrapher assume the work of the second and third shift telegraphers on an overtime basis. Furthermore, the change in his hours was made in accordance with the Rule of the Agreement which requires not less than thirty-six hours notice.

The record establishes that on July 7, 8, and 9, 1958, the first trick telegrapher left train orders on his desk to be picked up by train conductors

after the office was closed. Since the telephone was not used in connection with the picking up of these train orders, Rule 26 is not applicable.

Inasmuch as no third party not covered by the Telegraphers' Agreement intervened between the telegrapher who copied the orders and the conductors to whom they were addressed, there was no violation of the Scope Rule. Moreover, Carrier's Operating Rule 211, upon which Claimants rely, is not part of the Agreement and can be unilaterally modified. Carrier's departure from this rule resulted from the need for adjustment because the first trick operator indicated that he did not wish to work overtime on July 7, 8, and 9th. The change from personal delivery of train orders to the parties addressed to the pick up by train crews was, therefore, a modification of the operating rule and not a violation of the Agreement.

The Agreement does not prohibit or restrict Carrier from transferring the work of copying train orders from one location to another. For forty years the telegraphers at Pittsburgh Junction have copied train orders for Carrier. To be sure these employees are on the Pittsburgh and West Virginia Railway payroll, but they also are in the joint employ of the Carrier involved in the instant dispute. When they handle train orders for this Carrier, they are in Carrier's employ and are not considered "other employees" to which Rule 26 refers. As telegraphers of this Carrier who traditionally performed the handling of train orders they were properly assigned the work formerly handled at Adena.

For the foregoing reasons we hold that the Agreement 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 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

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 28th day of May 1965.