

Award No. 14168
Docket No. TE-14160

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

1. Carrier violated and continues to violate the existing agreement between the parties, when effective 4:00 P. M., Friday, March 18, 1960, the Carrier arbitrarily abolished the Assistant Wire Chief's position at Union Block Office, Terre Haute, Indiana, without conference or agreement and the Carrier has removed and is causing to be dismantled and removed all testing equipment, Wheatstone Bridge (removed Friday, March 4, 1960), Radarscope, Voltmeter, Testing Board and other equipment necessary to be used in conjunction with the prescribed duties of the Assistant Wire Chief whose primary duties are: Must be qualified to test wires, carrier equipment and balance duplex equipment, use testing equipment, make insulation and transmission measurements and test and adjust polar relays.

2. The Carrier violated and continues to violate the existing agreement between the parties by arbitrarily causing and delegating the prescribed duties and the work formerly performed by the Assistant Wire Chief at Union Block Office, to T & S Department employees who are not covered by the Telegraphers' Agreement as follows:

(a) At Union Block Office, a test board and other equipment similar to that used by the AWC is located in another room in this building and is used by the T & S employees in the same manner that said equipment was being used formerly by the AWC, which is being dismantled and removed by the T & S employees.

(b) On the Crawfordville and Peoria Branch Lines, the T & S employees do the testing, patching, balancing and adjusting. This work was formerly performed by the AWC at Union Block Office.

The AWC position at Union Block Office is a position of the employees covered by the Agreement for the government of Telegraph Department employees. This position has been abolished but the work remains to be performed in fact, therefore, the Carrier has violated the Scope of the Agreement and shall be required to compensate the following Telegraph Department employees named herein the equivalent of the time and one-half rate of the AWC position at Union Block Station for not being called and used to perform the required service on their rest days:

Tuesday	— 3/29/60	R. R. Sexton,	Incumbent	—	Union 2nd Trick
Wednesday	— 3/30/60	R. R. Sexton,	"	—	Union 2nd Trick
Thursday	— 3/31/60	J. Watson,	"	—	Preston Relief
Monday	— 4/ 4/60	R. L. Tingley,	"	—	Vigo 2nd Trick
Wednesday	— 4/ 6/60	A. L. Harrold,	"	—	Union 2nd Trick
Monday	— 4/11/60	R. L. Tingley,	"	—	Vigo 2nd Trick
Wednesday	— 4/13/60	D. L. Davis,	"	—	Preston 3rd Trick

EMPLOYEES' STATEMENT OF FACTS: The facts in this dispute are fairly laid out in the following correspondence exchanged by the parties in the course of handling the claim on the property.

"Terre Haute, Indiana
May 16, 1960

Mr. L. W. Huey
PTM & SO
Room 310, Union Station
Indianapolis, Indiana

Re: Various denials, relative to
abolishment of AWC position,
Union.

Dear Sir:

This will acknowledge receipt of your letters of denial, wherein you have submitted the following reason for disallowance of the instant claims, 'Our records indicate that all work performed was performed by a member of the O.R.T., Organization, therefore the claim is denied.'

This is to advise you that our records indicate that employees not covered by our agreement and who are not members of our Organization did perform the work, therefore your denials are wholly unsatisfactory and unacceptable to the employees and are hereby rejected.

This case will be appealed from your decision to the Supt.-of-Personnel and will be listed for discussion at our next meeting scheduled for Friday, June 10, 1960.

Yours very truly,

/s/ J. Watson
DC SW-2"

2. Carrier asserts that no claim can possibly be sustained for March 31, April 6, and 13, 1960, because the Employees have presented nothing to show what work, if any was performed by Signal Maintainers on said dates.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement, And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act, to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligation and reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that no provisions of the Rules Agreement were violated, and the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: It is the contention of Claimants that the Assistant Wire Chief's position at Union Block Office located at Terre Haute, Indiana, is a position of the employees' covered by the Telegraphers' Agreement; that on March 4, 1960, all of the necessary equipment used in connection with the prescribed duties of the Assistant Wire Chief was removed from the Union Block Office at Terre Haute to the "GY" Telegraph Office in Indianapolis, Indiana; that on March 18, 1960, the position of Assistant Wire Chief at Terre Haute was abolished; it is their further contention that there was work remaining to be performed and, in fact, was performed by T&S Department employees not covered by the existing Agreement and having no right to perform the work belonging exclusively to the Assistant Wire Chief at Terre Haute.

The Carrier denies that the T&S Department employees were performing any service which formerly accrued to the Assistant Wire Chief at Terre Haute; that there was no test equipment remaining at the "Union" Block Station at Terre Haute on the dates set forth in the Statement of Claim," that the work formerly done by the Assistant Wire Chief was done, subsequently, by the Wire Chief at "GY" Telegraph Office in Indianapolis; that T&S employees cooperated with the Wire Chief at Indianapolis in order to locate line difficulty; that the T&S Maintainers performed their duties, as they had done for many years, to repair lines; that the work performed by

T&S employes on the dates in question was incidental to and in connection with the maintenance of the line.

It is Claimants contention that the work done was incidental to and in connection with the operation of lines and that such work belonged to telegraphers under their Agreement.

The Scope Rule involved is general in nature and Claimants must support their claim that the Maintainers, Signal Department employes, performed work which had been done, exclusively, by the Assistant Wire Chief at Union Block Station. It could not be demonstrated that the T&S employes used any of the equipment that had been used in connection with prescribed duties of the Assistant Wire Chief at Terre Haute as that equipment had been removed to the "GY" station at Indianapolis prior to the alleged violations. Beyond a mere assertion by Petitioner that the work performed was incidental to and in connection with the operation of lines the record is quite unsatisfactory in the attempt to establish that the work performed by T&S employes fell into that category.

In Award 3524 — (Carter) we find the declaration of a principle governing in cases of this nature:

"It is the contention of the Organization that the work of the telegraphers at the 'SB' Relay Office before the abolition of the telegraphers' positions consisted of communication work by Morse telegraph and by telephone, the testing and patching of telegraph and telephone wires, and the balancing of the terminal telegraph repeater line on which teletype printer machines are located. The progressive development and use of the telephone in railroad operations has contributed greatly to the confusion which has grown up in attempting to differentiate what is and what is not communication work belonging to telegraphers under the scope rule of their Agreement. We think it is established as a general proposition that telephone communications consisting of messages and reports of record belong to the telegraphers by virtue of the scope rule of the Telegraphers' Agreement. The Carrier contends that testing, patching and balancing do not belong exclusively to the telegraphers. In this respect, we are of the opinion that testing, patching and balancing is work belonging exclusively to the telegraphers when it is incidental to and done in connection with the operation of lines, either telegraph or telephone, in performing work belonging to the telegraphers under their Agreement. **On the other hand, such work is not that of the telegrapher when done by Telegraph and Signal Maintainers incidental to and in connection with the maintenance of lines.** With these general rules in mind, we will consider the particular facts that brought about this dispute." (Emphasis ours.)

This was a case involving the same parties as here.

Award 13156 — (McGovern) is another award arising on this same property. In the dispute involved therein the Assistant Wire Chief at Union, Terre Haute, Indiana, requested payment of a call because of a T&S Maintainer making certain tests and removing patch cords that had been put up by the Assistant Wire Chief. After citing Award 3524 it was stated:

"We think that the work done in this case by the C&S maintainer was 'incidental to and in connection with the maintenance of

lines.' We think further that the reasoning . . . in the above quotation . . . is sound and logical. This in addition to the broad, general nature of the Telegraphers' Scope Rule and in the absence of evidence to sustain the custom, history and practice doctrine, we will deny the claim."

In the following awards, the principle in Award 3524 as cited in this Opinion was enunciated in support of denial awards — Award 4880 — Kelliher; Award 10624 — LaBelle.

Certain sustaining awards were submitted by the Organization but all of them involved the performance of telegrapher duties by clerks and it was held that such work was not incidental to a clerical position. They are not applicable here.

From an examination of the record the Board is convinced that wire trouble was being experienced and that the service of T&S Department employees were necessary and that the work performed by them was incidental to and in connection with the maintenance of the lines.

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

That the Agreement has not been 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 February 1966.