



Award No. 14281
Docket No. TE-13872

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Harr, Referee

PARTIES TO DISPUTE:

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

ILLINOIS TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Committee of The Order of Railroad Telegraphers on the Illinois Terminal Railroad, that:

1. Carrier violated and continues to violate the Agreement between the parties when it requires or permits employes not covered by said Agreement to perform the work of operating (transmitting and receiving messages and/or other communications) teletype machines seven days per week as follows:

Location	Hours per Day
McKinley Jct., Yard Office	24
Federal (Alton), Yard Office	24
East Belt (Springfield), Yard Office	24
East Peoria, Yard Office	9:00 A. M. to 5:00 P. M.
Decatur, Freight Office	9:00 A. M. to 5:00 P. M.

2. Carrier shall be required to compensate the appropriate number of senior idle employes, extra in preference, covered by the Agreement in the amount of a day's pay (8 hours) each for each eight-hour shift within each twenty-four hour period commencing sixty days prior to February 10, 1962 (date claim filed) and continuing thereafter until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective December 16, 1957, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The Scope Rule of the Agreement reads as follows:

"RULE 1. SCOPE

(a) This agreement will cover the employment of Agents, Agent-Telegraphers, Agent-Telephoners, Assistant Agents, Telegraphers, Telephoners, (except telephone switchboard operators), Teletype or

There is an agreement between the parties bearing effective date of December 16, 1957 which is on file with the Board and is hereby made part of this submission.

OPINION OF BOARD: Effective December 1, 1961, the Carrier installed teletype machines in five of its major yard offices. These machines were to facilitate the making of records in the yard offices and for the passing of train information by consist reports from one terminal to another. Before the installation of these machines, the making of inter-change reports was done by clerks in long hand or on a typewriter and either mailed or sent by messenger to the General Accounting Office in St. Louis, Missouri. Consists were telephoned by clerks from one terminal to another. No telegraphers were employed at these points before or after installation of the teletype machines. The Carrier assigned the use of these machines to Clerks and contends that the work done has not changed but only the manner of performing the work has changed.

The Employees contend that the operation of these machines is exclusively theirs at all points except the General Office. The Scope Rule of the Agreement reads:

"RULE 1. SCOPE

(a) This agreement will cover the employment of Agents, Agent-Telegraphers, Agent-Telephoners, Assistant Agents, Telegraphers, Telephoners, (except telephone switchboard operators), Teletype or Printer Operators (except teletype or printer operators in General Office), Towermen and Block Operators, hereinafter called employees.

(b) When new positions like in character to those incorporated in this agreement are created, compensation, duties and hours of service will be arranged in conformity with existing positions of the same relative character covered herein. If there are no existing positions of the same class, the rate for such newly created position shall be negotiated.

(c) No position shall be abolished and a new one created under another title covering the same class or grade of work for the purpose of reducing the pay or evading the application of this agreement. The intent of this paragraph is to prevent a reduction in rate by a reclassification where a vacancy in an existing position is to be filled.

(d) Positions covered by this agreement must be filled by employees coming within the scope of the agreement. The work covered belongs to the employees herein classified and shall not be removed from the scope except by agreement between the parties."

We agree with the Employees that this rule is clear and unambiguous. However, we must consider the other facts of this claim before arriving at a decision.

On December 9, 1961, the Carrier met with the General Chairman of the Clerks and advised him of the claim made by the Order of Railroad Telegraphers. On February 5, 1962, General Chairman of the Clerks wrote the Carrier as follows:

**"BROTHERHOD OF RAILWAY & STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES**

St. Louis, Missouri
February 5, 1962

Dear Mr. Mester:

At our Conference on December 9, 1961, you advised me that the Order of Railroad Telegraphers was demanding the work of operating the Teletypes which were recently installed in the Yard Offices and claiming it is covered by the scope of their agreement. You stated that you disagreed with them and had so informed the General Chairman.

This is to advise you that we are of the opinion that you have taken the proper attitude with respect to the demands of the ORT since it matters not how work subject to the scope of our agreement is performed; the method does not remove it from the coverage of our agreement. This position has been sustained on numerous occasions by the Third Division, NRAB. The work that the Yard Clerks are now performing on the Teletypes was formerly performed by them manually.

We wish to advise you that if the work is removed from our Agreement and assigned to employees covered by the ORT Agreement, we will prosecute claims on behalf of the employees in our craft or class.

Yours very truly,

/s/ Paul A. Dwyer
Paul A. Dwyer
General Chairman

PAD:ad."

We agree with Carrier's position that this is a jurisdictional dispute. Both Organizations claim the work under the Scope Rules of their respective Agreements.

We feel that this case should be remanded for tri-parte negotiations between the parties in interest. If the parties fail to come to an agreement they should look to the National Mediation Board for assistance.

We believe this Board has sound precedent for this decision.

Award 616 (Swacker) stated:

". . . It is quite obvious from the comprehensive statements and arguments in this case, that the following situation exists:

(a) That at the time the last agreements with the respective organizations were entered into, consideration was not given to the use of these teletype machines and, consequently, neither of the agreements definitely contemplated exclusive use of them;

(b) As to the Mediation Agreement of 1930 entered into between the Carrier and the telegraphers, in which proceeding,

the clerks were not a party, the latter could not be bound by it either if it constituted an encroachment on the clerks' rights or even if it attempted to set up a new limitation curtailing its permissive rights in the circumstances;

(c) That as to the attempted agreement between the heads of the respective organizations as to their relative rights concerning these machines, it is indefinite in this regard at least that it certainly did not anticipate their use as now practiced, and cannot be said to have definitely assigned rights to either party in the matter. It is subject to the further infirmity that the Carrier was not a party to it.

From the foregoing it is obvious that this Board is in no position to say with that degree of certainty which should back its awards, that the work here involved is the exclusive prerogative of either organization. It may be that it is competent for either to perform it, but there is quite insufficient basis to reach a conclusion that it might be done by one to the exclusion of the other.

Consequently, the case presents a real jurisdictional dispute, in that it is rather over which organization should have the right to perform the work as now performed, than as to which does have such right. Of such disputes this Board has no jurisdiction.

The case is accordingly remanded for conference between the three parties in interest to adjust if possible, by agreement, failing which their proper forum is the National Mediation Board."

In Award 11844 (Rose) we said:

"The record shows that there 'is a dispute between the parties concerning the use of the teletypes and printing machines, jurisdiction of the dispute was taken by the Mediation Board and the case designated as Case A-4077 is still pending;' and that the Brotherhood of Railway Clerks has also asserted an interest, and claimed the work involved, in the mediation case.

The circumstances presented by the record indicate that the dispute here is substantially the same as that in Award 11221 which also involved the parties here. In that Award, the Board said:

"This Board has on repeated occasions held when a jurisdictional dispute exists between two Organizations, it is not equipped nor empowered to decide.

We must therefore remand the claim before us for further negotiations between the parties. If negotiation fails, their proper forum is the National Mediation Board.'"

See also Awards 4452 (Carter), 4768 (Stone), 6224 (McMahon), 8143 (Elkouri), 8458 (Coburn) and 10217 (Wilson).

We will remand the claim for further negotiation between the parties.

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 a jurisdictional dispute is involved and the claim should be remanded for further negotiation.

AWARD

Claim remanded in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1966.