

Award No. 14830
Docket No. TE-11877

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines) that:

1. The Carrier violated the Agreement between the parties hereto when it required or permitted an employe classified as "Wire Chief" to perform the regular assigned duties of a "Printer Machine Operator" in "DW" General Telegrapher Office, Portland, Oregon.

2. The Carrier shall, because of the violation set out above, compensate the following extra Printer Machine Operators, on the date and during the time hereinafter set forth, who were available, willing and able to perform the work, a day's pay at the Printer Machine Operator's rate in "DW" General Telegraph Office.

February 9, 1959	G. C. Armistead	12:01 A. M.- 8:00 A. M.
February 9, 1959	Sam Diamond	8:00 A. M.- 4:00 P. M.
February 9, 1959	Flora Sheehan	4:00 P. M.-12:00 MN

3. The Carrier shall, in addition to the foregoing, compensate the senior idle Printer Machine Operator, extra in preference, a day's pay at the applicable rate, for each eight (8) hour shift around-the-clock on dates subsequent to that set out above, on which "Wire Chiefs" perform work regularly assigned to and performed by employes classified as Printer Machine Operators.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective December 1, 1944, reprinted March 1, 1951, and as amended.

At page 43 of said Agreement under the caption, "GENERAL TELEGRAPH OFFICES" and under a keynote reading:

"The symbol 'PMO', shown in this wage schedule, refers to Printer Machine Operator, means 'Printer Machine (including teletype operator)'."

CARRIER'S STATEMENT OF FACTS:

1. There is in evidence an agreement between the carrier and its employees represented by the petitioner, bearing an effective date of December 1, 1944, reprinted March 1, 1951, including revisions (hereinafter referred to as the current agreement), a copy of which is on file with the Board and is hereby made a part of the dispute.

2. The carrier maintains a General Telegraph Office in Portland, Oregon, which is operated on a 24-hour basis. The personnel of that office consists of Manager-1st Wire Chief, Wire Chiefs, Telegrapher-Printer Machine Operators and Printer Machine Operators.

3. On February 9, 1959, Mr. L. C. Van Houten, assigned to position of Manager-1st Wire Chief, 8:00 A. M. to 4:00 P. M., Mr. W. Cross, assigned to position of Wire Chief, 12:00 MDN to 8:00 A. M., and Mr. A. B. Laing, assigned to position of First Relief Wire Chief, 4:00 P. M. to 12:00 MDN, in General Telegraph Office, Portland, allegedly performed printer machine operator's work during their shifts on said date.

Extra Printer Machine Operators G. C. Armistead, Sam Diamond and Flora Sheehan submitted claims for 8 hours' compensation owing to Wire Chiefs Van Houten, Cross and Laing allegedly performing printer machine operator work on February 9, 1959. The claim was denied.

OPINION OF BOARD: This claim arises from the performance of certain work on printer machines by employees in Portland, Oregon classified as Wire Chief.

The Organization contends that the position of Wire Chief does not encompass printer machine operation which is reserved to employees in separate classifications. It points out that Rule 20(b) separates positions into various classes and prohibits crossing lines to perform the duties of these classes. Rule 41(a), it asserts, providing that machines used for communication transmission shall be operated "by one or another of the classes" specified in the Scope Rule, is a general rule and can not be held superior to the more specific Rule 20. This view, it concludes, is supported by Rule 41(b) which permits for interchange of work performance with telegraphers, but makes no reference to the right of wire chiefs to do such work.

The Carrier argues that operation of the printer machines had been traditionally a part of the wire chiefs duties, was authorized by Rule 41(a) and was not precluded by the terms of Rule 41(b), or Rule 20.

This issue has been considered by this Board on prior occasions with different results. In Award 6704, Referee Donaldson took the position that Rule 20 confines overtime work to employees in each of the several enumerated classes, and that although Rule 41(a) permits operation of automatic printer machines by "one or another" of the classes listed in the Scope Rule, the exchangeability of service performance with only the telegraphers, as specified in Rule 41(b) limits printer machine operation to printer machine operators and telegraphers, and employees in no other class may do such work.

The other precedent is that of Award 9116 wherein Referee Begley relies upon the Rule 41(a) reference to the Scope Rule to authorize Wire Chiefs

to do the contested work. He finds no exclusive reservation of right in Rule 20 to have printer machine operators do this work.

We find Award 9116, which evolved from a dispute between these same two parties, and the more recent award, controlling in this case. As noted by Referee Boyd in Award 10911:

"When a Division has previously considered and disposed of a dispute involving the same parties, the same rule and similar facts presenting the same issue as is now before the Division, the prior decisions should control. Any other standard would lead to chaos."

This does not deny the Board's authority to re-examine disputed issues where prior awards have been in palpable error. But such was not so in this case. Rule 41(a) clearly gives the right to work on printer machines to classifications other than printer machine operator and telegrapher. If work on such machines was to be barred to wire chiefs, Rule 41(a) would have been the place to so specify. Rule 20(b) in listing various classes, does not specifically exclude the wire chiefs from doing the disputed work. Additionally, it is clear that there was a long standing practice for wire chiefs to make use of the printer machines, in which the Organization evidently acquiesced for many years, including during negotiation of the parties current agreement.

For the foregoing reasons, we find the instant claim lacks merit.

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 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 12th day of October 1966.

DISSENT TO AWARD 14830, DOCKET TE-11877

I feel obliged to register dissent to this award because of what I consider to be two areas of error.

First: The award is inconsistent with its reasoning. After quoting with approval from Award 10911 where Referee Boyd reaffirmed the well known principle that disposition of a disputed issue should be controlling in any subsequent case involving the same issue and parties, this award then embraces Award 9116 which defied the principle.

Second: Adoption of Award 9116 as controlling is merely adoption of both of its errors. Those errors are pointed out in my dissent to Award 9116, which is by this reference incorporated herein.

Furthermore, the award shows a complete misconception of the problem involved. The question was **not** whether printer machine operation was to be excluded from the duties of wire chiefs. The issue was whether and to what extent the work required in the affected offices was to be specialized. And that issue was properly decided by Awards 6704 and 9028.

Award 14830 is clearly erroneous, and I must, perforce, dissent.

J. W. Whitehouse
Labor Member