

Award No. 14905
Docket No. TE-14427

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-San Francisco Railway, that:

1. Carrier violated and continues to violate its Agreement with the employes represented by The Order of Railroad Telegraphers when effective with close of business on Friday, March 9, 1962, it abolished the position of first trick telegrapher Pittsburg, Kansas, without abolishing the work thereof but instead distributed the work of the position to clerical and supervisory employes of that station.
2. Carrier further violated and continues to violate said Agreement when, effective March 10, 1962, and continuing daily thereafter, it consistently causes, requires or permits clerical and supervisory employes to perform work at Pittsburg, Kansas, that is reserved exclusively to the telegraphers by Article I of the current Telegraphers' Schedule Agreement.
3. Carrier further violated and continues to violate said Agreement when it failed and continues to fail to comply with Article XIII of the current Telegraphers' Schedule Agreement by not removing all commercial and railroad telegraph instruments and/or railroad telephone instruments from the station premises at Pittsburg, Kansas, but permitted both the commercial telephone and railroad telephone-telegraph switchboard to remain in service at Pittsburg.
4. Carrier further violated and continues to violate said Agreement when, effective March 10, 1962, and continuing daily thereafter, it utilizes a commercial telephone at Pittsburg, Kansas, in lieu of an emergency telephone contrary to the Memorandum of Agreement of July 25, 1942, and Article XIII of the current Schedule Agreement of July 25, 1942, by daily using this substitute telephone for intercity communications in the absence of emergency situations as defined by the aforementioned Memorandum of Agreement.
5. Carrier shall restore all work formerly performed by the first trick telegrapher at Pittsburg to employes covered by the Agreement between the parties.

6. Carrier shall compensate the senior idle telegrapher, extra in preference, an amount equivalent to one day's pay at the schedule rate shown for the first telegrapher Pittsburg, Kansas, subject to any subsequent general rate adjustments, for each day on and after March 10, 1962 that clerical and supervisory employees at Pittsburg perform any of the type of work reserved exclusively to the telegraphers by Article I of the current Telegraphers' Schedule Agreement.

7. In addition, the Carrier shall compensate the senior idle telegrapher, extra in preference, an amount equivalent to one day's pay at the schedule rate shown for the first telegrapher Pittsburg, subject to any subsequent general rate adjustments, for each day on and after March 20, 1962, that communication equipment was permitted to remain within the yard limits of the Pittsburg station and no telegrapher position assigned at this station.

8. Further, in addition, the Carrier shall compensate the senior idle telegrapher, extra in preference, an amount equivalent to one day's pay at the schedule rate shown for the first telegrapher position Pittsburg, Kansas, subject to any subsequent general rate adjustments, for each day on and after March 10, 1962, that a commercial telephone was utilized in lieu of an emergency telephone at Pittsburg, Kansas, in the absence of an emergency situation as defined by the Memorandum of Agreement of July 25, 1942.

9. Carrier shall permit a joint check of its records to the extent necessary in making effective the above claimed remedies for the violations cited.

EMPLOYEES' STATEMENT OF FACTS: Prior to March 10, 1962, there existed positions of telegrapher-clerk at Pittsburg, Kansas, subject to the Telegraphers' Agreement, since 1892. After seventy years the Carrier abolished the one remaining position pursuant to the following notice over the signature of the Superintendent:

"Fort Scott
March 7, 1962
25-17-891

Mr. D. B. Sudsberry
General Agent
Pittsburg, Kansas

Effective end tour of duty March 9, 1962 position of Telegrapher-Clerk, Pittsburgh, Kansas, is discontinued.

/s/ R. H. Paschal"

The above General Agent's position is not covered by the Agreement and performs no communication service. In other words, there is no remaining employee under the Telegraphers' Agreement at Carrier's Pittsburg facility to perform communication service. Carrier has heretofore refused to reclassify the agent's position as that of agent-telegrapher, a class covered by the Scope Rule of the Agreement. Pittsburg is a city of 20,000 population.

The Agreement currently in effect, which by reference hereto, is made a part of this submission, provides:

Relief Clerk Position No. 7

Chief Clerk
(Ft. Scott, Kansas)
Chief Yard Clerk
Yard Clerk

Saturday
Sunday
Monday
Tuesday-Wednesday

(Exhibits not reproduced.)

OPINION OF BOARD: The single Telegrapher-Clerk position at the Pittsburg, Kansas station was abolished.

Carrier contends that all work which belongs exclusively to Telegraphers was abolished and that all instruments were removed as required by Article XIII of the Agreement. This Article states:

"(1) When a station is changed from telegraph and/or telephone to non-telegraph and/or non-telephone office, all commercial and railroad telephone instruments used by railroad employees will be taken out of said station within ten days, and such instruments will not, at any time, be placed within the yard limits of said station in order to defeat the purpose of this rule . . ."

There is no competent evidence in the record that the Scope Rule has been violated. The two instances of such alleged violation, set forth in Employees' letter of May 7, 1962, are categorically denied by the Carrier in a letter dated October 4, 1962, which says, "The incidents complained of on April 6, 1962 and April 12, 1962 have been given extensive handling. There has been no encroachment upon the contractual rights of Telegraphers at Pittsburg by supervisory employees and I have a statement from the Chief Yard Clerk at Pittsburg stating that he has never transmitted a written message." Employees have failed to establish by a preponderance of evidence that work reserved exclusively to Telegraphers has been or is being performed by employees not covered by the Telegraphers' Agreement.

All telegraph sounders and keys, and railroad telephone receivers and transmitters have been removed from the station premises. Only the commercial telephone and the telegraph-telephone test panel remain. The latter is of no use without the receivers and transmitters. The retention of the test panel and the commercial telephone is not in violation of Article XIII nor is it in violation of the Memorandum of Agreement dated July 25, 1942. That Memorandum of Agreement says:

"The term 'emergency telephone' is construed for the purpose of this agreement to mean a telephone kept under lock and key at fixed locations for use in emergencies, and commercial telephones when used in lieu of an emergency telephone." (Emphasis ours.)

On the basis of the record, it must be concluded that there is no merit to the claim.

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

That the Carrier did not violate the Agreement.

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 October 1966.