

Award No. 14941
Docket No. TE-13521

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

CHICAGO & ILLINOIS MIDLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago and Illinois Midland Railway, that:

1. Carrier violated the parties' Agreement at Taylorville, Illinois, commencing December 16, 1960, by transferring to employees not covered by said Agreement, the transmission and reception of messages and reports of record (OS'es), maintenance of crew board, and clerical work incidental thereto, which work has by tradition, historical practice and custom been performed by employees under the scope of the Agreement.

2. Carrier shall be required, for each day the violation continues, to compensate:

(a) T. J. Rodden, former third trick occupant at Taylorville, whose assigned work week thereat was Thursday through Monday, a day's pay for each day he is deprived of working said position, commencing Friday, December 16, 1960.

(b) L. D. Sunley, former occupant of No. 4 relief position, covered third trick at Taylorville on Tuesdays and Wednesdays, a day's pay for each of such days that he is deprived of performing service on said position, commencing Tuesday, December 20, 1960.

EMPLOYEES' STATEMENT OF FACTS: For many years prior to the incident which occasioned this claim, Carrier maintained around-the-clock service at Taylorville, Illinois. The three shifts were protected by employees classified as agent-telegrapher (who worked first trick), second shift telegrapher-clerk, third shift telegrapher-clerk, and No. 4 relief telegrapher-clerk. The occupants of these stated positions performed the work shown in Part 1 of the Statement of Claim.

On March 3, 1958, the third shift telegrapher-clerk position and No. 4 relief telegrapher-clerk position were abolished. On May 16, 1958, the second

would have resulted in men violating the Hours of Service Law. Further, the handling of crew boards and other similar duties does not belong exclusively to the Order of Railroad Telegraphers.

DISPOSITION: Claims declined as being without merit under current schedule agreement with the Order of Railroad Telegraphers.

* * * * *

Mr. Harvey's decision was rejected by General Chairman Brown and the claims appealed to the Manager of Personnel. After conference on August 3, 1961 the Manager of Personnel declined the claims. The pertinent portion of his decision (Exhibit F) reads as follows:

"MP-ORT-30
Supt. No. 5-61

* * * * *

DISPOSITION: Claims declined as being without merit under any provision of the current agreement. Article 1, Scope Rule and the long established practices on this property do not support the organization's contentions that telegraphers have the exclusive right to perform the work here involved.

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(Exhibits not reproduced.)

OPINION OF BOARD: On December 16, 1960, Carrier instructed a General Clerk, who is regularly assigned between 4:00 A.M. and 12:00 Noon, to handle and maintain the crew board at the Taylorville Station, including communication by telephone and clerical work incidental thereto, instead of having such work lay over during the night for the Agent to handle when he reports to work at 7:30 A.M. Petitioner contends that such work, as well as reports of OS's and tie ups allegedly handled by said clerk, had been performed at the Taylorville Station by Petitioner's members for over twenty-five years and that Carrier had violated Article 1, Scope Rule of the Agreement between the parties.

In the first instance, Carrier contends that there is a substantial variance between the claim presented to this Board and the dispute handled on the property. While there is a variance, the difference is in the wording and does not change the nature of the claim. We have noted that the initial claim referred solely to disputed work performed by a named clerk, where as the claim submitted to the Board states that "Carrier violated the parties Agreement . . . , by transferring to employes not covered by said Agreement," certain work, which might be construed as encompassing more duties than were actually performed by the named clerk. However, the Board, if possible, should retain jurisdiction of a dispute and the Carrier has not been mislead as to the issues confronting it. Unlike the situation found in our Award 14298, we find that the variance involved herein was not substantial and will consider the dispute. Awards 10918 and 5077.

Petitioner objects to certain evidence offered by Carrier for the first time in its Ex parte Submission to this Board. Carrier's Exhibits C and D and

references to an automatic annunciator are all matters not raised by the Carrier on the property and are offered for the first time in the Submission. We find they are not properly before us for consideration. Awards 8484, 12790 and others. However, we do not agree that the two statements by Carrier's employes, who formerly worked at the Taylorville Station as clerks, are inadmissible inasmuch as the record discloses that Petitioner's General Chairman made specific reference to said statements during the consideration of the dispute on the property. Both statements are admissible in support of Carrier's affirmative defense that long established practices on this property do not support the Petitioner's contention that telegraphers had the exclusive right to perform the work here involved.

The record discloses and the parties agree that Carrier assigned the handling of crew boards and other similar duties to a clerical employe. Carrier contends that such work does not belong exclusively to telegraphers as asserted by Petitioner. The pertinent provision of the Agreement is as follows:

"ARTICLE 1. SCOPE

This Agreement will govern the hours of service, working conditions and rates of pay of all Telegraphers (Except Telegrapher-Clerk in Traffic Department), Telephone Operators (except switch-board operators), Agents (except at Pekin and Springfield), Agent-Telegraphers, Agent-Telephoners, Towermen and Levermen."

The above rule does not define the work and is general in nature. Therefore, Petitioner to prevail must prove by competent evidence that Claimants have an exclusive right to the disputed work established through tradition, historical practice and custom on Carrier's property.

Instead of offering evidence of the practice on Carrier's property system wide, Petitioner limits its assertions to Carrier's station at Taylorville, Illinois and admits that at other locations, clerks help maintain crew boards. Petitioner relies upon past practice at one station. However, no probative evidence was offered supporting the contention that telegraphers have exclusively performed such work over a period of many years. Carrier denies that telegraphers have maintained the crew board at the Taylorville Station to the exclusion of all other employes and offered in evidence statements of employes who formerly worked as clerks at said location, which clearly refute Petitioner's contentions.

We have studied the Awards cited by the parties, including those relied on by Petitioner between the same parties and under the same Agreement. It is significant that Awards 13290, 13291 and 13292 involved disputes concerning communications of record having to do with the operation of trains. Here, we are primarily concerned with communications by telephone in connection with the maintenance and handling of crew boards. Clearly, the issues in said Awards are readily distinguishable from those involved in the instant dispute and therefore, such Awards are not controlling.

Petitioner has failed to show by a preponderance of the evidence that the disputed work has been exclusively performed on the property by employes covered by the Agreement. Award 13335. We must, therefore, dismiss 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 Claim must be dismissed for failure of proof.

AWARD

Claim dismissed.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of November 1966.