

Award No. 16662
Docket No. TE-15755

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Louisville & Nashville Railroad (NC&StL District), that Carrier violated the terms of an agreement between the parties when effective November 1, 1963 it:

(a) removed from said agreement work in connection with the operation of mechanical telegraph transmission or reception devices used to transmit and/or receive telegraphic communications between "CG" Telegraph Office, Union Station, Chattanooga, Tennessee, and "WX" Office, Wauhatchie Yard, Tiftonia, Tennessee, as well as other points both on and off the L&N Line, and transferred the performance of the work of the "CG" Office to employees outside the scope of the parties' agreement at another location, who now operate these same mechanical telegraph transmission or reception devices to perform work formerly performed by the occupants of the abolished positions in "CG" Telegraph Office, Union Station, Chattanooga, Tennessee.

(b) Carrier shall restore the work improperly removed from the scope of the parties' Agreement thereto, and establish the necessary number of positions, properly classified in accordance with the parties' Agreement, to perform the work covered thereby.

(c) Carrier shall, because of the violation set out in paragraph (a) hereof, compensate the former occupants, Glenn Allison, S. P. Edens, H. L. Kelly, A. L. Longley and N. E. Gray, on the first, second, third and relief positions in "CG" Telegraph Office, Union Station, Chattanooga, Tennessee, who were improperly deprived of their respective positions by reason of Carrier's violative act, and a day's (8 hours) pay at the rate of the position occupied for each work day, so long as the violation here complained of continues.

(d) Carrier shall, in addition to the above, reimburse each of the employees named in paragraph (c) hereof for any expenses incurred by reason of carrier's violative act.

(e) Carrier shall, in addition to all of the foregoing, compensate the senior idle telegrapher, extra in preference, on the Division, a day's (8 hours) pay at the minimum telegraphers' rate for the Division for each eight (8) hour shift around-the-clock on each date commencing November 1, 1963, and so long thereafter that employees not covered by the parties' agreement operate mechanical telegraph transmission or reception devices in the performance of work covered by the parties' agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Louisville & Nashville Railroad (Nashville, Chattanooga & St. Louis District), hereinafter referred to as Carrier, and its employees in station, tower and telegraph service represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), effective September 1, 1949, as amended and as supplemented. Copies of said Agreement are available to your Board, and are, by this reference, made a part hereof.

At page 41 under the Wage Scale of said Agreement are listed the positions existing at Chattanooga, Tennessee, on the effective date of said Agreement. For ready reference the listings read:

"Station	Position	Rates Per Hour
Chattanooga, Tenn. East End Ave.	1st Trick Opr. Lv.....	\$1.63
	2nd Trick Opr. Lv.....	1.63
	3rd Trick Opr. Lv.....	1.63
Sup't Office	Chief Operator	1.68
	1st Trick Operator	1.63
	2nd Trick Operator	1.63
	3rd Trick Operator	1.63
Lewis St. Tower	1st Trick Opr. Lv.....	1.63
	2nd Trick Opr. Lv.....	1.63
	3rd Trick Opr. Lv.....	1.63
N. Y. Tower	1st Trick Opr. Lv.....	1.58
	2nd Trick Opr. Lv.....	1.58
	3rd Trick Opr. Lv.....	1.58"

The Superintendent's Office, listed above, as well as the Chief Train Dispatcher's Office at Chattanooga was prior to the incident which precipitated this claim located in the Union Station at Chattanooga, Tennessee. Also located in said Union Station under the caption — Superintendent's Office — was a Telegraph Office to which the call letters "CG" were assigned. Employees within the scope of the parties' Agreement were assigned in "CG" Telegraph Office on an around-the-clock basis. In addition to the telegraph and telephone communication equipment in "CG" Telegraph Office, the Carrier also maintained mechanical telegraph transmission and reception devices, commonly referred to by their trade name, teletype machines. All of the communication work arising in the Superintendent's and Chief Dispatcher's Office

The bulk of the work formerly performed by the telegraphers in "CG" Office involved Chief Dispatcher's work and that of the Division Superintendent who at that time were located in Chattanooga, which work, of necessity, had to be transferred to Atlanta when the Superintendent's headquarters was changed and the Chattanooga Chief Dispatcher Office abolished; hence, the transfer of that portion of the work to "N" Office, Tilford Yard.

All offices involved in this dispute are located within the terminal limits at Chattanooga.

Under date of December 27, 1963, claim was filed by the District Chairman, based on alleged violation of the telegraphers' agreement, NC&StL District, copy of which is herewith filed as Carrier's Exhibit A.

The claim was progressed in the usual manner up to the Personnel Department. Copies of pertinent correspondence exchanged in the progressing of the claim are herewith filed as Carrier's Exhibits B, C, D, E and F.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. This claim centers around the communications between the Union Station in Chattanooga and the new telegraph office in the Yard Office designated Wauhatchie Yard.

The claim herein bottoms on the use by clerks at the Union Station in Chattanooga of a Data-Fax machine to send messages to the telegraph office at Wauhatchie Yard for transmission by Telegraphers from that point. It is settled that the tearing of messages off the teletype is not the "Operation" of mechanical telegraph transmission or receptive devices within the meaning of the Scope Rule (Award 14184, Dolnick, and Award 15833, Ives), so this aspect of the claim will not be discussed further.

The Carrier has cited Award 9913 (Begley) in support of its contention that the operation of the Data-Fax machine by the clerks is not within the Scope Rule and work exclusively reserved to the Telegraphers. In that case which dealt with the clerks cutting perforated tape for a teletype machine and sending those taped messages to the Telegrapher in a closed circuit, this Board stated as follows:

"The Board finds from the evidence presented that the clerks are performing their traditional work and the Telegraphers have continued to perform their traditional work only in a different manner. The Employees do not contend that the clerks cannot type consists, messages, reports, etc., on these teletype machines. Their only contention is that clerks should not be allowed to make the tape which is automatically made when the consists, messages, reports, etc., are typed out by the clerks. The Employees also contend that the clerks do not have the right to send these taped messages to the Telegraphers in the closed circuit. However, a careful review of the record does not support the Employees' claim that other employees of the Carrier are performing work belonging exclusively under the Telegraphers' agreement to Telegraphers. Rather, such work as Telegraphers might otherwise perform or might have rights to under the agreement is now performed not by other employees, but by the teletype machines that are being used by clerks. This Division cannot support the proposition that when an automatic machine

is installed to perform a certain function that part of that function, namely, the making of the tape, should be removed from the machine. The Employees' claim cannot be sustained. The telegraphers are performing the work of a telegrapher even though the performance of a Telegrapher's work takes less time now than sending the message by Morse code or by the telephone. Telegraphers do not have the right under their agreement to prepare this type of coded tape."

Award 9913 was cited with approval in Award 10531 (Mitchell).

We believe the sending of Data-Fax messages from the Ticket-Cashier at Union Station to the Telegrapher at Wauhatchie Yard is analogous to the sending of taped messages by the clerks to the Telegraphers as set out in the fact situation in Award 9913. We find this award particularly authoritative in that the same parties involved therein are involved in the case at bar.

Award 13614 (Moore) held, in referring to a Data-Fax machine, "It is evident that such a machine does not replace the telegraph instrument."

We believe the reasoning in Award 9913 is sound. We further believe that there is no evidence that the operation of a Data-Fax machine is the operation of a mechanical telegraph transmission or reception device within the meaning of the Scope Rule of the Agreement.

There is no need to cite the long line of awards holding that management has an obligation to operate the railroad so as to obtain maximum efficiency and that in doing so may abolish unneeded positions.

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 25th day of October 1968.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.