

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20733
Docket Number CL-20566

Robert A. Franden, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
PARTIES TO DISPUTE: (
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7453) that:

1. Carrier violated the Agreement between the parties when it transferred the work of relaying teletype message traffic from "WI" Office, Battle Creek, Michigan to machines or similar devices located in Toronto, Canada.

2. Carrier shall compensate the following Claimants for all wage loss and expenses incurred who were formerly assigned to positions in "WI" Office, as a result:

William Beckley, Chief Operator
E. D. Carpenter, First-Shift Operator
K. M. Lewis, Second-Shift Operator
J. M. Fraley, Relief Operator

3. Carrier shall further compensate the senior idle telegrapher, extra in preference, eight (8) hours' pay for each date the alleged violation continues, commencing February 15, 1972.

4. Carrier shall arrange a joint check of its records to determine amounts due Claimants hereunder.

OPINION OF BOARD: Prior to March of 1968 the Carrier maintained a message relay office at Battle Creek, Michigan known as the "WI" Office. The work performed at said office involved the relaying of teletype messages between local stations east and west of Battle Creek on local circuits and the Carrier's four other message relay offices.

In March of 1968 the wire circuits between the five relay offices were connected to the wire circuits of the Canadian National Tele-Communications Company. Basically this is a computerized electronic switcher designed to relay messages. The effect of this change was to cause the claimants to lose their positions.

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The Organization contends that certain of the work previously performed at the "WI" Office is now being performed by employees of the Canadian Tele-Communications Company. It is argued that this was a change under Rule 32 of the Agreement and/or that it resulted in a coordination of the operations of the Carrier and the Canadian National Railway which could only be accomplished by Agreement under the Washington Job Protection Agreement.

The Carrier contends that the change was merely a technological change permitted by Article III of the February 7, 1965 Mediation Agreement.

At the outset let us state that the change here involved does not fall under Article III of the February 7, 1965 Mediation Agreement. To come within its terms the change must involve the transfer of work or employees "throughout the system". This case involved an alleged transfer of work to a communications company outside of the Carrier's system.

Further, we find no basis for holding the change here involved to be a "coordination" as described in the Washington Job Protection Agreement. The Canadian Tele-Communications Company has all of the legal requisites of a corporation with an identity and operation separate from the Canadian National Railway. The employees have failed to support their allegation that the Communications Company and Railway are one and the same. It remains a mere assertion. We must respect the integrity of the corporate person absent a showing to the contrary.

The case must be resolved around the issue of whether there has been a violation of Rule 32 of the Agreement.

Rule 32 provides in part:

"RULE 32 - TELETYPE SERVICE

"ARTICLE I.

(a) Printing telegraph machines or similar devices used for transmitting and receiving communications of record, either or both, hereinafter referred to as machines as installed at locations shown on the attached Exhibit 'A' and made a part of this agreement and such other similar machines as may be installed in Telegraph Offices shall be operated by employees represented by The Order of Railroad Telegraphers, except as provided in paragraph 'C' of this Article.

"(b) Should the Company desire to make any installation or change not provided for in paragraph 'A' of this Article, thirty (30) days' written advance notice containing details of proposed change shall be given the General Chairman and the matter shall thereafter be handled in accordance with the provisions of the Railway Labor Act as amended."

The Organization alleges that the Switcher-Computer falls within the definition "Printing telegraph machines or similar devices used for transmitting and receiving messages of record". This assertion is based on the fact that it does more than just the relay work previously performed at the "WI" Office. It stores messages on magnetic tape for possible later transmissions. In fact delayed transmissions are made from the magnetic tape. This is analogized to the maintenance of messages on perforated tape previously done at the "WI" Office. In this regard the Organization contends that the Switcher-Computer is a substitute for the teletype devices including the tape perforators, tape reperforators, transmitter distributors and printer receivers. The employees allege that this substitution could only have been properly accomplished pursuant to an Agreement as called for in Rule 32(b).

We are persuaded that the Switcher-Computer performs functions sufficiently similar to the teletype devices located at the "WI" Office so as to be considered "similar devices" under Rule 32. The change here involved was of a character that required handling in accordance with Rule 32(b). The Carrier failed to do so and such failure constituted a violation of the Agreement.

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 violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May 1975.