

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20795  
Docket Number TE-6800

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
( (Formerly The Order of Railroad Telegraphers)  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company  
( (South-Central District)

STATEMENT OF CLAIM: Claim of The Order of Railroad Telegraphers on the  
Union Pacific Railroad, South-Central and Northwestern  
Districts, that

(a) The Carrier has violated and continues to violate the agreement between the parties signatory thereto, when it requires or permits employees not covered by said agreement to "handle" train orders at West End Yard Office, Las Vegas, Nevada, and

(b) that the Carrier has violated and continues to violate the agreement when it requires or permits other than those covered by said agreement to operate printing and/or mechanical telegraph machines used in the transmission or reception of messages and reports of record, and/or to perforate tape or cards as a function in the transmission or reception of messages and reports of record at the West End Yard Office, Las Vegas, Nevada, and

(c) that for such violations the Carrier shall compensate the senior idle employee or employees covered by the Telegraphers' Agreement for the equivalent of a day's pay for each 8-hour shift, both day and night, since August 25, 1952, the date on which the new yard office at Las Vegas was placed in service, at the telegraphers' rate applicable to that particular location.

OPINION OF BOARD:

DECISION

The claim will be denied, because it is not supported by the record.

BACKGROUND

The claim in this case, Docket TE-6800, arose in October 1952 when the Order of Railroad Telegraphers asserted that some of the work of operating newly installed IBM equipment at Las Vegas, Nevada, belonged to employees represented by the Telegraphers and that the Telegraphers' Agreement had been violated by the Carrier's assignment of such work to employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. A similar claim in Docket TE-6799, involving IBM equipment

at Salt Lake City, Utah, was handled on the property as a companion claim, but, after the claims reached the National Railroad Adjustment Board, the claims were handled separately. The claim involving the operation of the equipment at Salt Lake City was denied in Award No. 8656, rendered on January 12, 1959, on the ground that the communications work previously performed by Telegraphers was not being performed by other employees, but rather, was being performed by the automatic operation of the IBM equipment. In contrast, the claim involving the operation of the equipment at Las Vegas was sustained in Award No. 9988, rendered on July 14, 1961 on the ground that the operation of the IBM teletype transmitting printer and receiving printer was work covered by the Telegraphers' Agreement. The effect of this latter Award was to give to the Telegraphers some of the IBM work at Las Vegas then performed by the Clerks, as well as to require the Carrier to compensate the Telegraphers for the accumulated loss of work due to the preceding performance of such work by the Clerks.

The Telegraphers filed an action to enforce Award No. 9988 in the United States District Court, Denver, Colorado, which action was resisted by Carrier on the ground, inter alia, that an indispensable party, the Clerks, had not been joined in the action. This ground was found valid by the Court which granted the Carrier's motion to dismiss on "the ground of failure to join indispensable parties." The court gave the Telegraphers 30 days to file an amended complaint making the Clerks a party defendant to the action, and also ordered that failure to file such amended complaint would result, upon ex parte application of the Carrier, in the court ordering the entry of a final judgment of dismissal. The Order of Railroad Telegraphers v. Union Pacific Railroad Company, U. S. District Court, Denver, Colorado, 231 F. Supp. 33 (July 27, 1964).

The Telegraphers' indisposition to file an amended complaint resulted in a district court judgment of dismissal with prejudice, which judgment was appealed to the United States Court of Appeals for the Tenth Circuit. The Appeals Court affirmed the District Court's disposition of the case, noting that the record was too incomplete for the courts to make a decision due to the Clerks not having been a party to the Board proceeding which resulted in Award No. 9988. The Order of Railroad Telegraphers v. Union Pacific Railroad Company, U. S. Ct. Appls., 10th Circuit, 349 F. 2d. 408 (October 8, 1965.)

The decision of the Tenth Circuit Court of Appeals was the subject of a grant of certiorari by the U. S. Supreme Court which was considered in Transportation-Communication Employees Union v. Union Pacific Railroad Company, 385 U.S. 157, 87 S. Ct. 369 (1966). There the Supreme Court said

"... We granted certiorari in order to settle the doubts about whether the Adjustment Board must exercise its exclusive jurisdiction to settle disputes like this in a single proceeding with all disputant unions present. ... We hold that it must."

In connection with this ruling, the Supreme Court gave the following specific directions for further proceedings in the action involving enforcement of Award No. 9988.

"We affirm the judgment of the Court of Appeals in holding that the clerks' union should be a party before the Board and the courts to this labor dispute over job assignments for its members. The cause should be remanded to the District Court with directions to remand this case to the Board. The Board should be directed to give once again the clerk's union an opportunity to be heard, and, whether or not the clerk's union accepts this opportunity, to resolve this entire dispute upon consideration not only of the contract between the railroad and the telegraphers, but 'in the light of \* \* \* (contracts) between the railroad' and any other union 'involved' in the overall dispute, and upon consideration of 'evidence as to usage, practice and custom' pertinent to all these agreements. The Board's order, based upon such thorough consideration after giving the clerks' union a chance to be heard, will then be enforceable by the courts."

PRESENT STATUS AND NATURE OF CASE

Following the remand directive by the U.S. Supreme Court, the Third Division, NRAB, issued a Third Party Notice to the Clerks' Organization on November 16, 1971. Thereafter, under date of November 26, 1971, the Clerks filed with this Board a Submission opposing the Telegrapher claim involved in Award No. 9988 (record page 354A, Docket TE-6800); and on December 18, 1974 the Clerks participated with the Telegraphers and the Carrier in oral argument on the claim before the Third Division with the herein Referee participating as Neutral Member of the Board. Thus the dispute now before this Board conforms with the directive of the U.S. Supreme Court in Transportation-Communication Employees Union that the Clerks once again be given an opportunity to be heard on the Telegraphers' claim against the Carrier.

The statement of claim, consisting of parts (a), (b), and (c), now before the Board is the identical claim considered by the Board in 1961 in Award No. 9988. However, during the December 18, 1974 oral argument on the claim, all parties agreed that part (a) of the claim is not involved in this proceeding because such part was finally adjudicated by Award No. 9988 and was not brought into question by the subsequent court litigation on that Award. Accordingly, the statement of claim to be considered in this proceeding, consisting of parts (b) and (c) of the original claim, is as follows:

"(b) that the Carrier has violated and continues to violate the agreement when it requires or permits other than those covered by said agreement to operate printing and/or mechanical telegraph machines used in the transmission or reception of messages and reports of record, and/or to perforate tape or cards as a function in the transmission or reception of messages and reports of record at the West End Yard Office, Las Vegas, Nevada, and

(c) that for such violations the Carrier shall compensate the senior idle employe or employes covered by the Telegraphers' Agreement for the equivalent of a day's pay for each 8-hour shift, both day and night, since August 25, 1952, the date on which the new yard office at Las Vegas was placed in service, at the telegraphers' rate applicable to that particular location."

The Telegraphers and the Clarks have merged into the same Organization subsequent to the filing of the original claim, but this does not have any significance in the resolution of the claim.

ABSTRACT OF DOCKET TE-6800

More than twenty-two (22) years have passed since the submission to this Board of the Telegraphers' May 5, 1953 Notice of Intention to file an Ex Parte Submission on the claim in Docket TE-6800. The record in this case now consists of 391 pages, not counting the previously mentioned opinions of the U.S. District Court, the Tenth Circuit Court of Appeals, and the U. S. Supreme Court. The record in Docket No. 6799, consisting of 304 pages, has also been made a part of the consideration of the claim in Docket TE-6800.

The pertinent docket entries in this case are as follows:

October 20, 1952: Telegraphers presented on the property the claim embraced by parts (b) and (c) of the instant claim. Letter of General Chairman A. S. Herrera to Assistant to Vice President F. C. Wood. (Record page (Rp.) 43.)

November 6, 1952: Discussion of the claim in conference on the property. (Rp. 48.)

November 10, 1952: Carrier made final denial of claim on the property. Letter of Assistant to Vice President F. C. Wood to General Chairman A. S. Herrera. (Rp. 114.)

November 21, 1952: Telegraphers' notice to Carrier that denial decision was not satisfactory and that claim would be further progressed under the Railway Labor Act. (Rp. 114.)

May 5, 1953: Telegraphers' Notice to Third Division, NRAB, of Intention to file an Ex Parte Submission. (Rp. 1.)

May 29, 1953: Date of Telegraphers' Ex Parte Submission. (Rp. 3.)

October 5, 1953: Date of Carrier's Ex Parte Submission. (Rp. 69.)

May 3, 1956: Date of Telegraphers' reply to Carrier Submission dated October 5, 1953. (Rp. 125.)

June 6, 1956: Hearing on TE-6800 before Third Division, NRAB (Rp. 177.)

June 6, 1956: Date of Carrier's Second Submission and Answer to the Organizations Ex Parte Submission. (Rp. 135.)

July 25, 1956: Date of Employees' Answer to the Second Submission of the Carrier dated June 6, 1956. (Rp. 178.)

August 6, 1956: Date of Carrier's Third Submission and Carrier's Reply to Organizations Statement at Hearing. (Rp. 188.)

January 15, 1957: Carrier's Fourth Submission and Carrier's Reply to Organization's Third Submission dated July 25, 1956. (Rp. 210.)

April 11, 1961: Hearing on Docket TE-6800 before Third Division, NRAB. (Rp. 235.)

July 14, 1961: Award No. 9988 adopted by Third Division, NRAB, Chicago, Illinois to resolve claim in Docket TE-6800, Referee Thomas C. Begley, serving as Neutral Member of Board. (Rp. 254.)

July 27, 1964: Order of U.S. District Court, Denver, Colorado, dismissing telegraphers' action to enforce Award No. 9988. Order of Railroad Telegraphers' Union v. Union Pacific Railroad Company, 231 F.Supp. 33.

October 8, 1965: Decision of the U.S. Court of Appeals, Tenth Circuit, affirming District Court Order of July 27, 1974. Order of Railroad Telegraphers v. Union Pacific Railroad Company, 349 F. 2d 408.

December 5, 1966: Decision of U.S. Supreme Court affirming Court of Appeals decision of October 8, 1965, and remanding Telegraphers' enforcement action to District Court with directions to remand to the NRAB. Transportation-Communication Employees Union v. Union Pacific Railroad Company, 385 U.S. 1032, 87 S. Ct. 737.

November 16, 1971: Third Party Notice issued to the Brotherhood of Railway, Airline & Steamship Clerks by Third Division, NRAB. (Rp. 350.)

November 26, 1971: Date of Submission by Clerk's Organization. (Rp. 354A.)

January 5, 1972: Hearing on Docket TE-6800 before Third Division, NRAB. (Rp. 355.)

January 27, 1972: Date of Telegraphers' Submission in response to Clerks' Submission dated November 26, 1971. (Rp. 357.)

February 23, 1972: Date of Carrier's Response to Submission filed by the Clerks' Organization. (Rp. 359.)

December 18, 1974: Hearing on Docket TE-6800 before the Third Division, NRAB, with the herein Referee, Fred Blackwell, serving as Neutral Member of Board. (Rp. 388.) Appearances: For Telegraphers, Mr. D. A. Bobo, International Vice President. For Clerks, Messrs. Paul J. Meir, General Chairman - Lines West and W. E. Grandlund, General Chairman - Lines East. For Carrier, Messrs. Aldon Lott, Director Labor Relations - South Central District and H. Lustgarten, Jr., Assistant General Solicitor.

#### STATEMENT OF FACTS

Prior to October 1952, a variety of reports and records involved in the Carrier's operations of its freight yard at Las Vegas, Nevada, were prepared and handled by clerical employees. When such reports and records were required to be transmitted to another point on the Carrier's line, the transmittal or communication work arising therefrom was performed by Telegrapher employees. Thus, the preparation of reports and records by compiling, writing, typing, etc., was work performed by clerks and the communication of same between points by telegraph, teletype, or telephone, was work performed by telegraphers.

In or about October 1952, the Carrier installed in its West-End Yard Office, Las Vegas, Nevada, a complex of IBM equipment for the purpose of automating a substantial portion of the manual work involved in the preparation of records and the communication of records. This equipment, at one stage of the preparation and communication process, has the capacity to print a copy of desired information for local in-office use while concurrently transmitting

the same information to a distant point where another IBM machine prints a copy of the information for use there. The converse of this capacity also obtains, in that a receiving machine at Las Vegas can produce a print-out of information which originates at a distant point for use there and for transmittal to Las Vegas. Because of the equipment's capacity to transmit and receive information in this manner, the Telegraphers say that their Scope Rule was violated when the Carrier assigned clerical employees to operate the transmitting and receiving units of the equipment.

The equipment in question consists of seven different types of machines, if the teletype receiving printer and teletype transmitter are considered as the same type of machine. The number of each type of machine used at Las Vegas, and the descriptive name of each type, is as follows:

- (1) One IBM Alphabetical Key Punch Machine
- (2) Two IBM Tape Controlled Card Punch Machines
- (3) Two IBM Card Controlled Tape Machines
- (4) One IBM Sorter Machine
- (5) One Alphabetical Accounting Machine
- (6) One IBM Alphabetical Interpreter
- (7) Two Teletype Receiving Printers and One Teletype Transmitter

The operations and functions of this equipment are not in dispute, for the parties agreed in the December 18, 1974 hearing to take as accurate the factual description of such operations which is set out at pages 26-28 of Award No. 9988. With the exception of the alphabetization used for convenience to designate the paragraphs in item 7 hereinafter, that description as found verbatim in Award No. 9988 now follows.

(1) ONE IBM ALPHABETICAL KEY PUNCH MACHINE

These machines punch holes in a card to correspond with information to be used by associated equipment to achieve various results in subsequent operations.

The holes are cut by the machine manually, by an operator using a keyboard similar to a typewriter keyboard.

The work performed by the key punch operator is the same as the work performed by a typist, except that where the typist produces the information on a typewritten page, the key punch operator transfers the information to a punched card.

The operation of the alphabetical key punch is a manual operation; that is to say, the result achieved by the machine, i.e., a punched card, occurs as a result of manipulation of the device by human hands.

(2) TWO IBM TAPE CONTROLLED CARD PUNCH MACHINES

This machine produces the same result as the alphabetical key punch, i.e. a punched card containing certain information.

The machine is activated by electrical impulse from a series of codes on a punched tape. When the tape is fed into the machine it automatically punches cards to correspond with the information on the tape.

The tape controlled card punch machine differs from the alphabetical key punch in the respect that its operation is completely automatic.

(3) TWO IBM CARD CONTROLLED TAPE MACHINES

This machine using punch cards punches the tape referred to in (2) above.

The punched cards are placed in the machine and the switch turned on. The cards then feed automatically through the machine, producing the punched tape.

The machine is completely automatic -- the result which it achieves requires no human activation; it occurs entirely as a result of electrical impulse induced by holes in the punched cards.

(4) ONE IBM SORTER MACHINE

The function of this machine is to segregate the punched cards into different classifications so that the information desired may be secured by inserting the cards in any particular classification into some other machine.

The sorting technique is automatic. It makes possible the immediate grouping and listing of cars by railroad, by type, by series, etc.

(5) ONE ALPHABETICAL ACCOUNTING MACHINE

This machine, in the same manner as the others, is completely automatic and is activated by punched cards. When the punched cards feed through the machine, the information represented by the holes punched in the cards is printed on a form.



The machine is used primarily for compiling the wheel report, formerly typewritten; although by changing the panel, switch lists, lists of certain types of cars handled or any special report required by the company covering car handling may be secured.

(6) ONE IBM ALPHABETICAL INTERPRETER

Since it would be impractical for the employees engaged in the car handling processes to interpret the information on the cards merely from the holes punched, the cards are fed through the "interpreter." The result is the printing across the top of the cards of the information represented by the holes in the cards.

This machine is automatic in operation.

(7) TELETYPE MACHINES

(a) This auxiliary equipment functions completely automatically in conjunction with the car handling system. For the receipt and distribution of information used in the car record processes, two teletype receiving printers and one teletype transmitter have been installed adjacent to the Car Record Bureau. Attached to the receiving printers are two teletype reperforators.

(b) The teletype receiving printer is activated by electrical impulse imposed automatically at some distant point. At the receiving point it produces information on a printed page. Using the same impulses, and simultaneously to the printing of the information on paper, the reperforator punches a tape on which information corresponding to that shown on the printed page is reproduced.

(c) The tape produced by the reperforator is then used to produce punched cards by the process described in Item (2) above.

(d) The teletype transmitters operate in the same manner: The tape produced electrically from cards by the process described in Item (3) is inserted in the teletype transmitter. Electrical impulses imposed by the code on the tape activate the teletype transmitter. The machine produces a printed copy of the information contained on the tape and at the same time reproduces the same information on a receiver at some distant point.

(e) A reperforator at the distant point of reception duplicates the information on a tape and the entire procedure is repeated.

POSITION OF THE PARTIES

The Telegraphers Scope Rule refers to the positions of "teletype operators" and "printer operators," and even though the Rule does not invest the Telegraphers with the exclusive right to perform the work of such positions, the Telegraphers' Organization states that "by virtue of history, practice and contract the operation of any machine which leads to and completes a communication of record, is telegraph operation and that such operation is covered by the Telegraphers' Agreement." In support of this position, the Telegraphers contend that throughout the developments in communications technology, from the early Morse instruments to today's more sophisticated instruments, this Board has supported the notion that the Telegraphers' Scope Rule follows the work or function of communicating, in whatever improved mechanical device it may be found. Award Nos. 4249, 4458, and 4516. As an alternative argument, submitted in oral argument in connection with the Clerks joining the dispute as a third party, the Telegraphers contend that if the Board finds that the Clerks have a right actually to perform the disputed work, then the Telegraphers should receive idle-time pay because of their communications work having been improperly contracted and/or assigned by the Carrier to the Clerks. And finally, the Telegraphers say that this Board heard all of the facts of this case when it rendered Award No. 9988 in 1961, and that it would be unjust for the Board to reverse itself at this late date.

The Clerks' position is that operation of the IBM equipment is specifically covered by their Scope Rule, which reads as follows:

"(a) Clerks. Employees who regularly devote not less than four hours per day to the compiling, writing and/or calculating incident to keeping records and accounts, transcribing and writing letters, bills, reports, statements and similar work, and to the operation of teletypes and office mechanical equipment and devices in connection with such duties and work."

In support of this basic position, the Clerks assert in their November 26, 1971 Submission (Record page 354B) that:

"... clerical forces at many other stations on the property operate the Key Punch machines, IBM machines, etc. exclusively. Some examples are at Milford, Utah, Geneva, Utah, Salt Lake City, Utah, Yermo, California and the Station in question, Las Vegas, Nevada. In addition, Traffic Department Offices at Los Angeles, California, Salt Lake City, Utah, Boise and Pocatello, Idaho, Portland, Oregon and numerous off-line agencies all have teletype machines operated exclusively by clerical forces."

The Carrier says that no "communication work" exists in the instant facts to be performed by anyone, because, with the exception of the manually produced card on the IBM key punch machines, which the Telegraphers recognize as clerical work, all operations of the IBM machines are fully automatic; thus, whatever information is transmitted or received is done automatically and simultaneously with the performance of essential clerical functions. A detailed statement of this basic position is given by the Carrier at pages 17-18 of its February 23, 1972 Response to the Clerks' Submission of November 26, 1971. (Rp. 376-377.)

"...whether or not the automated nature of the machines involved totally eliminated all manual functions would only have bearing upon the case if substantial and material remaining manual functions had as their sole purpose the performance of the work functions claimed by Telegraphers. In this case, however, as pointed out above, the primary clerical functions continued until the time the typewritten records were finally produced by the IBM machines and automatic teletype. Any manual procedures such as inserting key punch cards, inserting tape, pushing a button to activate the machines, etc., were still within the scope of clerical performance of clerical functions. The communication function to which the Telegraphers lay claim herein was still performed automatically as a simultaneous concomitant [sic] of the performance of these clerical functions. The trivial manual acts, upon which Award 9988 relied in concluding that the machines were not fully automatic, to the extent they had any materiality whatsoever, were still acts performed as a part, and for the purpose, of completing clerical functions. Accordingly, such argument afforded no basis of support whatsoever to the Telegraphers' claims to a communications function which itself was clearly performed fully automatically and simultaneously with the clerical functions prior to the time those clerical functions had been fully completed.

"The fact remains, therefore, that whether or not the machines involved were fully and totally automatic, the particular communications functions claimed by the Telegraphers herein were certainly performed as a full and total automatic concomitant [sic] of the performance of clerical functions and there were no specific, independent work functions directed exclusively at the performance of the communication function Telegraphers' claim. Despite the erroneous conclusions of the majority in Award 9988, therefore, it should be clear that Award 8656 was not only 'final and binding' but also wholly correct in its determination that there was no work involved in the operation of these machines which Telegraphers could properly claim the right to perform."

The Carrier also asserts that denial Award No. 8656 is controlling in this case under principles of res judicata and estoppel by judgment.

DISCUSSION

The claim in Award No. 8656 involved claimants and IBM equipment at Salt Lake City, Utah, whereas this claim involves claimants and equipment at Las Vegas, Nevada. Thus, the dispute resolved by Award No. 8656 and this dispute do not have the identity of subject matter which is essential to the application of the doctrine of res judicata. See Award No. 6935 for an appropriate application of res judicata. Nor can the Board summarily conclude that Award No. 8656 is controlling on issues presented in Award No. 9988, because the opinion in the latter Award is based on findings of fact on the pivotal issues which are different from the findings in the former Award. Consequently, the Board must consider the instant claim anew and, based on the whole record and the oral argument, make a determination on the merits of the claim.

However, before discussing the merits as the Board views them in this proceeding, it is appropriate to review the conflicts between Award No. 8656 and Award No. 9988. In denying the Telegraphers' claim involving clerical operation of IBM equipment at Salt Lake City in Award No. 8656, this Board stated:

"A careful review of the record does not support petitioners' claim that other employees of the Carrier are performing work belonging exclusively under the Telegraphers Agreement. 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 automatic operation of the machines in question.

"The Division has not supporter [sic] the proposition that when an automatic machine is installed to perform a certain function, the employee who previously performed that function is entitled to remain simply to watch the automatic machine operate. \* \* \*"

The above Award was rendered on January 12, 1959. On July 14, 1961, the Board reached a contra result in Award No. 9988, on the basis of a finding that the operation of the IBM teletype transmitting printer and receiving printer by clerical employees constituted a violation of the Telegraphers' Agreement. The reasoning underlying this finding is indicated by the following extracts from the opinion in Award No. 9988.

"The machines involved in the Card Record process at Las Vegas, the work functions performed by the employees at Las Vegas in connection with the machines and the results achieved are identical in every detail to the machines used, work functions performed and results achieved in the same operations at the Carrier's North Yard Office in Salt Lake City. The question of the use of these machines at the Carrier's North Yard Office at Salt Lake City was decided in Award 8656 on January 12, 1959 and that Award denied the claim made by the employees. The key to the entire IBM system is the punch card in which holes are punched either manually or automatically from a punched tape to correspond with certain information which the associated equipment uses in the compilation and reproduction of various reports and records. The new system was put into effect by the Carrier on October 28, 1952. No part of the process as it pertains to the receipt and transmission of information on the teletype printer machines occurs as a result of activation of any device by the employees of the IBM Card Record Bureau -- the process is entirely automatic."

...

"We are in accord with what was said in Award No. 8656 in that the Division has not supported the proposition that when an automatic machine is installed to perform a certain function, the employee who previously performed the function is entitled to remain idly by and watch the automatic machine operate. However, from the evidence produced at the hearing in this docket, we find that these machines are not automatically operated. To the contrary, we find that the clerks who are now operating these machines must place these perforated cards in the machine, then push a button and then the machine operates."

...

"The Carrier, by its own admission, states that the tape produced electrically from cars [sic] by the process described in Item 3 is inserted in the teletype transmitter. This tape is inserted by a clerk and it is work which comes under the Telegraphers' Agreement. The teletype receiving printer is also work that comes under the Telegraphers' Agreement and has been performed in the past by telegraphers and not by clerks. The tape at a distant point that is transmitted to the teletype receiving printer must be inserted by someone to activate that machine.

"In Award No. 8656, the Board found that the work was not performed by other employees, but by the automatic operation of the machines in question. We find that the work performed on the two teletype receiving printers and the one teletype transmitter at the West-End Yard Office is performed by an automatic operation of the machines in question, but is activated by a clerical employee. Tape-producing machines activate [sic] by clerks may not be used to reperfurate tape or be connected to through circuits. Tape produced by a clerk must be fed into a transmitting machine for communication between on line offices by a telegrapher."

The facts on the operations of the IBM machines at Las Vegas, which are the subject of the foregoing extracts from Award No. 9988, have not changed since the Board's issuance of that Award in 1961. Indeed, the facts set out in that Award at page 46, relative to the two teletype receiving printers and the teletype transmitting printer, are identical to the facts on the same machines which the parties have agreed to in this proceeding (See item 7(a)-(e), supra 9). Thus, the Board in this proceeding must decide whether it agrees with the ultimate conclusions which were rendered on these facts by the opinion in Award No. 9988. The Board does not agree.

There is no dispute that the work of operating six of the seven types of IBM machines (items 1-6, supra 7) was properly performed by clerical employees. This work encompasses the following tasks: pushing a button to activate the machines; punching holes in a card by using a keyboard similar to a typewriter keyboard (one key punch machine, item 1); inserting punched cards into a machine to produce a punched tape (two card-to tape machines, item 3); inserting punched tapes into a machine to produce cards which correspond with the information on the tapes (two tape-to-card punch machines, item 2); inserting punched cards into a machine for a separation into different classifications (one sorter machine, item 4); inserting punched cards into a machine to produce a printed form which corresponds with the information on the cards, e. g., a wheel report, formerly typewritten (one accounting machine, item 5); and inserting cards into a machine which prints on the cards the information represented by the holes in the card (one interpreter machine, item 6).

This brings us to the functions and the manual tasks involved in operating the two teletype receiving printers and the teletype transmitter, which, in the parties' agreed statement of facts (item 7, supra 9), are described as follows:

"(b) The teletype receiving printer is activated by electrical impulse imposed automatically at some distant point. At the receiving point it produces information on a printed page. Using the same impulses, and simultaneously to the printing of the information on paper, the reperforator punches a tape on which information corresponding to that shown on the printed page is reproduced.

"(c) The tape produced by the reperforator is then used to produce punched cards by the process described in Item (2) above.

"(d) The teletype transmitters operate in the same manner: The tape produced electrically from cards by the process described in Item (3) is inserted in the teletype transmitter. Electrical impulses imposed by the code on the tape activate the teletype transmitter. The machine produces a printed copy of the information contained on the tape and at the same time reproduces the same information on a receiver at some distant point.

"(e) A reperforator at the distant point of reception duplicates the information on a tape and the entire procedure is repeated."

The transmitting printer referred to in these facts is the first order of the Board's interest, because, as between the transmitting printer and the receiving printer, the transmitting printer entails a greater amount of specific, identifiable work which must be performed in the Las Vegas office. In examining the facts in foregoing (d) and (e) on the teletype transmitting printer, one can see that a tape, prior to its use in the machine, undergoes a process whereby electrical impulses are imposed by code on the tape. These electrical impulses, upon insertion of the tape into the machine, activates the machine which then performs two functions simultaneously: the machine prints out information such as a train consist for local in-office use, and concurrent therewith, the machine also communicates the train consist to an outside point. The task of producing the print-out of the train consist or similar information by use of the transmitting printer is essentially a clerical function which is covered by the Clerks' Scope Rule and, moreover, it is quite clear that the manual work which is required to perform this task also results in the activation of the machine's capacity to carry out the second function of

communicating the train consist to an outside point. Except for the initial insertion of the tape, which must be done to perform the clerical work of printing the train consist for local use, no manual task is involved in the activation of the machine's communication functions. Thus, in a practical sense, the communication function of the teletype transmitting printer must be regarded as being carried out automatically, which, in turn, means that the operation of the transmitting printer involves clerical functions which come under the Scope Rule of the Clerks' Organization. The same holds true when the facts in foregoing (b) and (c) on the teletype receiving machine are considered. Here, the insertion of a tape in a transmitting printer at an outside point, by a clerk in the course of performing clerical work, results in information being communicated automatically to the receiving printer at Las Vegas. The receiving printer then simultaneously puts the information on a printed page and on a punched tape, which latter is used on the tape-to-card machine as described in item 7(c), supra 9. In this case, the communication function is completed coincident with the production of the printed page and tape in the Las Vegas office, and the only work to be performed in such office is the mere taking of the page and the tape from the receiving printer for use in the regular order of the office work. The handling of the page and the tape in this manner is essentially a clerical function which does not remotely involve the clerks' performance of communication work. So, as with the transmitting receiver, the operation of the receiving printer involves clerical functions which come under the Clerks' Scope Rule.

This examination of the teletype transmitter printers and receiving printer, in the context of the overall operation of the IBM machines, leads inescapably to the conclusion that the communication work which was performed by Telegraphers at Las Vegas prior to October 1952 did not survive as identifiable Telegraphers' work after the IBM equipment went into operation. It is true that the function of communication continued after the equipment went into use, and it is even possible that a greater volume of information was communicated than previously; however, the communication function was carried out automatically when clerical employees operated the teletype printers in order to perform clerical tasks, and no extra task of even a minuscule nature was performed to achieve the communication function.

Based on the foregoing, and the whole record, the Board concludes that the facts and issues in this case are parallel to the facts and issues in Award No. 8656, and that the denial ruling of that Award should be followed here. Accordingly, the Board finds that the Carrier properly assigned the disputed work to its clerical employees at Las Vegas and that such assignment did not violate the Carrier's Agreement with the Telegraphers. In view of this finding, it necessarily follows that the Board finds no merit in the Telegrapher's contention regarding idle time pay. The claim must therefore be denied.



The Board further finds that the foregoing decision is based upon consideration of the Carrier's Agreement with the Telegraphers and the Carrier's Agreement with the Clerks and that such decision disposes of the rights of all of the parties to this proceeding in accordance with the directive of the U.S. Supreme Court in Transportation Communication Employees Union v. Union Pacific Railroad Company, (supra, 2)

In reaching this conclusion, the Board has been mindful that the Clerks' participation in the case as a third party disputant has not resulted in the presentation to the Board of any additional or different factual information than was before the Board when Award No. 9988 was rendered on July 14, 1961. The Board is thus aware of the wide variance between the ultimate conclusions reached in that Award and the conclusions reached in this proceeding on the same facts. It is indeed a curious event when a claim which is found valid by a Board decision in 1961 is found invalid by a Board decision in 1975, even though the operative facts are the same in each decision. However, since the 1961 decision on parts (b) and (c) of the claim in Award No. 9988 has been vacated by the U.S. Supreme Court in Transportation-Communication Employees Union v. Union Pacific Railroad Company, certainly as a practical matter and probably in a legal sense also, the Board was obliged to examine these parts of the claim de novo, and in a manner which could have resulted in affirmance or denial of the claim, but without giving Award No. 9988 any precedential effect. The Board has fulfilled this obligation and it therefore serves no useful purpose to attempt to explicate the reasons for the opposite conclusions reached in Award No. 9988 and in this proceeding.

**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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1975.