

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22384
Docket Number CL-22234

Louis Yagoda, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8430) that:

(1) Carrier violated, and continues to violate, the Agreement between the parties signatory thereto when it requires and permits employees not covered thereby to perform Wire Chief duties at Willard, Ohio, and

(2) Carrier shall, as a result, compensate each idle Wire Chief listed below eight (8) hours' pay at punitive rate on each of their rest days beginning November 10, 1975, and continuing until Carrier returns such Wire Chief duties to the Wire Chief class of employees under the Agreement at Willard, Ohio:

B. R. Miller	A. H. McMellan
G. R. Baker	L. J. Patterson
N. J. Keene	M. F. Lanker
H. J. Hulderman	C. R. Taddeo
M. L. Harshman	L. H. Bellman
J. C. Clark	B. J. Chinnel.

OPINION OF BOARD: Certain pertinent facts are either indisputable from the record or are not disputed by the parties.

One of these is that the Scope Rule of the controlling Agreement is general in nature. It does not describe the functional components of the titles listed or mandate that such or other occupational activities be limited exclusively to the covered employees.

Rule 69 of the Agreement, also invoked by Petitioners, merely imposes certain preconditions for satisfying skill requirements on Wire Chief employees, on whose behalf the instant claims are made.

This rule also does not direct that the assignment of specified functions be confined to Wire Chiefs to the exclusion of other crafts.

A third Rule invoked by Petitioners, in the course of progressing the instant claims, is Rule 18. This comes closer to the province of traditional Scope Rule containment inasmuch as it provides for retention to covered employes of "work not previously handled" by covered employes resulting from use of "new machines or mechanical devices of any kind" when these machines are such "coming within the Scope of this Agreement."

Although Rule 18 suggests, in its wording, a situation such as that existing in the circumstances of the instant dispute, some definitional difficulties arise in applying a mechanism "coming within the Scope of the Agreement" that has been replaced by another one, when the Agreement does not contain a Scope Rule per se. In our opinion, for enforcement, this Rule requires of us the preliminary determination that is universally recognized as requisite for all scope problems in the absence of a scope rule explicitly mandating that such-and-such work may be done only by such-and-such crafts. That determinant is whether the work in question constitutes identifiable craft inputs undeviatingly and unbrokenly assigned to one craft and no other by substantial temporal and quantitative custom and practice under circumstances such as are present in the disputed instance. We construe Rule 18 as stating that where such background exists, when such settled custom and practice of operative skills and/or achieved results are effectuated by means of a new mechanism replacing the old, the employes who have been so involved are entitled to move on to the new mechanism to perform their customary functions (albeit some learning adaptations may be required of them).

It then becomes apparent that the controlling task confronting the Board is the familiar search for whether the subject work has exclusively accrued to Claimants by definitive and conclusive custom.

Such investigation, depending as it only can on the submitted record, is complicated here by (1) outright differences in factual material submitted by the parties on critical aspects of the history, (2) uncertainties of clear-cut functional division between the two competing crafts involved, in respect to these functions, and (3) the difficulties of following and identifying the functions in question as they became affected by technological amendments in telecommunications methodology.

It is uncontested that Wire Chiefs, a classification covered by the Schedule Agreement between the parties, had been employed for a substantial period of time at the WM Relay Office, staffed by one such Wire Chief position on each tour, seven days per week, together with a Manager-Wire Chief stationed on the day shift. These employees operated communication mechanisms and equipment for the sending, receiving and relaying of various communications as part of a network of such communication centers. It is undisputed that the means through which the teletype circuits used in these centers were interconnected and communications conveyed consisted of combinations of lines owned by the Carrier itself and supplemented increasingly to an extensive degree by lines leased from telephone companies.

It is also undisputed that part of the responsibilities of the Wire Chiefs at Willard in the operation of their equipment was both to be on the watch for faulty receipts and transmissions and to test (by simple functional indicia) to determine where such deficiencies exist. Where such were found, the Wire Chiefs had the obligation to "bridge" or "patch" the circuit involved (i.e. shunt the deficient circuit by bypassing it to alter the routine into a more efficient connective circuit) and make appropriate note of the troubled function or equipment. Their duties did not include actual repair of the deficiency, but they were obligated to notify another class of employees - Telephone Maintainers (not included in this contract coverage) - to come to the trouble area to make the necessary repairs.

The Telephone Maintainer classification covered by an Agreement with the International Brotherhood of Electrical Workers contains a scope statement going back to 1921 that the Electricians covered by that Agreement (of which Telephone Maintainers are a part) shall include a wide variety of installation, repair, construction and reconstruction of electric, electronic, telegraph and telephone components and their interconnective elements (information submitted by IBEW in these proceedings as part of their "Third Party" submission). It is not disputed that, as such, members of this craft have customarily repaired deficient communication circuits in the field as well as done corrective work at communications centers (even though initial testing, bridging and patching may have already been done on such defective channels by Wire Chiefs).

The instant dispute had its genesis in Carrier's determination to supplement Willard WM Relay office with a new Terminal Services Center that was to be opened on February 1, 1976. This project was

initiated in connection with the construction by Carrier of a microwave network scheduled to go into operation on January 31, 1977, as part of a plan covering the entire Chessie System of which the B&O is a part. Carrier's statement is not refuted that the purpose behind establishing these microwave transmissions as communication links was to eliminate the necessity of continuing the leasing of lines from some twenty-five different telephone companies which Carrier found too expensive in operation and upkeep and insufficient to carry an increased load demand (microwave systems use ultra high frequency radio waves in a concentrated beam adaptable to multi-channel use between transmitter and receiver towers equipped for such purpose).

To carry out this plan, Carrier leased and installed at this new facility two computers to be used in the microwave-linked system, together with an electronic switching system. As part of this installation, the teletype circuits throughout Carrier's system were wired directly to this electronic switcher.

The Dispatcher's telephone and the so-called Block Line removed from the old Relay office and the circuits thereon were relocated in the new Communications Building. Also removed from the WM Relay office was a test board which had there been used by the Wire Chiefs. Under the new setup, wires lead from the new microwave building to the relay radio tower rather than from the WM Relay office to outside lines.

It is acknowledged by Carrier that prior to removal of the old test board and equipment from WM Relay office, the Wire Chiefs did use the equipment to test physical wire circuits (Carrier contending, however, that this involved circuits only west of Willard, but concedes that Wire Chiefs in K Relay office at Akron, Ohio used similar equipment when required to test wires east of Willard.) It is also acknowledged by Carrier that whereas previous to this move, only first shift Telephone Maintainer positions were established at Willard, effective November 1, 1975, the positions on these tricks were abolished and four Telephone Maintainer positions were established at the new location to perform service twenty-four hours each day, including relief on rest days.

At the time of the submission of the instant claim, the Wire Chiefs in the old installation were kept occupied with message transmission and receipt at that location. (Although apparently the Wire Chief Supervisor position has been extracted, it is not certain from the record whether this is related to the disputed functions given to the Telephone Maintainers in the new facility and the parties do not appear to agree on whether other inroads were made on the available earning time for the remaining Wire Chiefs.)

The instant claims concern themselves with the fact that that part of the regular duties of the Wire Chiefs which involved testing and patching (albeit now applied to linkages using microwave transmission) is now admittedly being performed by the Telephone Maintainers in the new Communications Center.

On that basis, a continuous claim was submitted by B.R.A.C. under date of December 10, 1975 for payment to twelve allegedly entitled employes for eight hours' pay at the overtime rate on their respective rest days "beginning November 10, 1975 and continuing until the violation of the Agreement is corrected."

One of the positions of Carrier taken in opposition to these claims was that the microwave towers had not been erected at the time of the claim (this appears to us to be moot, except as to the time when the illegal deprivations, if any, of the Wire Chiefs' work began).

Other points made by Carrier are:

1. The duties of the Wire Chief positions have unavoidably dwindled through the years because of technological changes. Those employed at the Willard office were and are involved in essentially the transmission of messages.
2. Although the Wire Chiefs have at times tested lines - involving only the Dispatcher's line and the Block line west of Willard when asked by Dispatcher to do so - such work was never exclusively assigned to them.
3. Telephone Maintainers throughout Carrier's system have been utilized for communication repair work and have routinely made as many wire tests as Wire Chiefs.
4. Because of the different nature of the circuitry and telemetry, microwave equipment having "replaced most of the leased lines throughout the System" and the use of a new test board, the work now encountered by Telephone Maintainers in their incidental and infrequent testing, patching and bridging is not of the same kind formerly done by the Wire Chiefs.

5. There was little of this kind of work done by Wire Chiefs before; there is little of this being done by Telephone Maintainers now. Nevertheless, as "repairers" rather than "operators" (the latter the basic function of the Wire Chiefs) the Maintainers more suitably - and in the field as well as at communication centers - were and are frequently called on to test out, to improvise substitutions for and permanently repair circuits. The work complained of is within the routine scope of their work; for the Wire Chiefs it is an infrequent incidental encounter with trouble promptly referable to the Telephone Maintainer.
6. Most emphatically of all, Carrier maintains that, "The work in connection with the telephone and microwave equipment has never been performed by employees of this craft. Microwave is simply a private radio communication system and the employees of this craft have not ever been used for this work."

Employees counter by declaring that in at least one instance involving a microwave linkage system installed between Baltimore and Philadelphia, Wire Chiefs continued to do testing, bridging and patching thereat. (Carrier contends that Employees confuse this with attendance of a "fault-alarm" board monitored by the Wire Chiefs to detect whether aviation-warning lights were inoperative on microwave towers and calling the nearest control tower to inform them of such deficiency.) Employees also point out that the testing, bridging and patching at the new microwave facility involves also the use of this activity for wiring circuits also connected to that office.

It must be noted at this point that Carrier raises a question of remedial entitlement even if Petitioner's contentions are regarded as meritorious. It is contended by Carrier that five of the named Claimants held assignments as operators at other locations at the time of these claims "and were not connected with the Wire Chief positions at WM Relay office." It is further contended that of these five, three "were not even qualified to work a Wire Chief position." A sixth Claimant is identified by Carrier as one who "was assigned to the Clerical Extra Board at Willard and had no connection with WM Relay Office."

CONCLUSIONS

On the basis of close study of the question and our best judgment from the facts of record (some of them conflicting), we conclude that we must follow for the circumstances here the line of Awards which have distinguished between the testing, patching and bridging work done by the communication crafts in monitoring the equipment with which they send and receive messages (pending permanent repair to deficiencies found, by the electrical or signal maintainer craft) and the repair function which may require independent or additional testing, bridging and patching by the repairman or maintainer as part of his rectification function.

We are convinced that, as far as determinable from the record, the work in question has so continuously and repeatedly been confined to the message transmitting and receiving craft when arising at message centers, that the criteria of established custom and practice must preserve scope rights to that craft at such locations.

The fact that the work now involves a message center which relies, in part, on microwave transmission does not, we believe, change the scope history and influence therefrom on the appropriate craft assignment of the work.

We shall therefore sustain the Petitioners in respect to Item (1) of the instant claim.

However, we find that Petitioners have not established that the named Claimants are in all respects the appropriate beneficiaries of the deprivations claimed and for the loss of time claimed. They have, in these respects, failed to overcome Carrier's explicit representations that some were not thus deprived at all and others for lesser periods of time than claimed.

As the record stands, Claimants H. J. Hulderman, C. R. Taddeo, M. L. Harshman, L. H. Bellman and J. C. Clark were not connected with the Wire Chief positions at WM Relay Office and three of them (Taddeo, Harshman and Clark) were not qualified to work a Wire Chief position. Claimant B. J. Chinnel was assigned to the Clerical Extra Board at Willard and had no connection with the WM Relay Office.

It is therefore our conclusion that there is no basis for any pay at the punitive rate for these six and claim for such will be denied.

As to the other six Claimants, it is not disputed that assignment held by Claimant N. J. Keene was abolished upon his retirement on April 12, 1976.

In respect to the rest-day pay at premium or "punitive" rate, we find that payment is due for these six respective employees (excluding Mr. Keene after April 12, 1976) at the "call" rate provided for in Rule 8 of the Agreement for such rest days on which testing, patching or bridging were done at this location by Telephone Maintainers.

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.

A W A R D

Item (1) is sustained.

Item (2) is sustained to the extent of the accompanying Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary



Dated at Chicago, Illinois, this 16th day of April 1979.