

SPECIAL BOARD OF ADJUSTMENT NO. 117

ORDER OF RAILROAD TELEGRAPHERS
and
MISSOURI PACIFIC RAILROAD COMPANY

Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad that:

1. Carrier violated terms of the Agreements between the parties hereto when on the 18th day of January 1952, acting unilaterally, it declared abolished the positions of second and third shift CTC Telegrapher-Clerk at Dexter, Missouri, without in fact abolishing the work of such positions;
2. Carrier further violated terms of the Agreement when on the same day, acting unilaterally, it transferred work of such positions to Poplar Bluff, Missouri, and required and permitted employees not covered by Telegraphers' Agreement to perform such work;
3. Carrier shall be required to restore such work to scope of the Telegraphers' Agreement to be performed by employees covered thereunder and entitled thereto according to the provisions of such agreement.
4. Employees wrongfully displaced or adversely affected by the violative actions of Carrier shall be fully compensated for all loss and expenses, if any, sustained as a result thereof; the names and amounts to be determined by a joint check of Carrier's records.

OPINION OF BOARD: The Board being of unanimous opinion that a third party notice issue is present here agreed to issue notice to the American Train Dispatchers Association. Notice was given to this Organization under date of August 3, 1956, that the hearing in Docket No. 55 would be held at 10:00 a.m. on August 7, provided the Dispatchers were agreeable to this date. This notice was given to R. O. Burke, General Chairman, and O. H. Braese, President of the American Train Dispatchers Association, who acknowledged receipt and acceptance of said notice. J. B. Tipler, Vice President, and R. O. Burke, General Chairman, appeared before the Board and presented their position to the issue in dispute.

This claim, in essence, attacks the propriety of the respondent's action in moving certain CTC work from Dexter, Missouri, to Poplar Bluff, Missouri, on the 18th day of January, 1952.

The Organization asserts that the action of the respondent here was of a unilateral nature in violation of both the prime Telegraphers' Agreement and the Memorandum and Appendix Agreement bearing date of February 1, 1939, when the action by the respondent resulted in the abolishment of the second and third trick positions that had, prior to the 18th day of January, 1952, existed at Dexter, Missouri. This Board is requested to order the respondent to restore the work to the Scope Rule of the Telegraphers' Agreement and to make all employees affected whole for all loss and expenses incurred.

The Organization asserts that the operation of the CTC panel, as and when it existed at Dexter, Missouri, was assigned to and operated by employees coming within the effective agreement and that when such work was assigned to employees covered by the agreement such work then and there came under the scope of the agreement and could not thereafter (negotiation excepted) be removed therefrom by any action of the respondent.

The Organization further contended that the Carrier violated the terms of the Memorandum of Agreement and the Appendix thereto, dated as shown above, when it failed to confer with the Telegraphers and reach an agreement before making the change at Dexter which resulted in the unjustified abolishment of the second and third trick telegrapher positions at this point in contravention of the seniority provisions of the effective agreement.

The respondent here takes the position that none of the effective rules of the basic agreement indicate a violation here and points out that the Scope Rule of the Telegraphers' Agreement does not contemplate the exclusive operation of CTC equipment by the Telegraphers.

The respondent further asserted that under and by virtue of the Memorandum of Agreement bearing date of February 1, 1939, the Carrier was permitted, as here, to assign the operation of CTC equipment to employees not covered by the Telegraphers' Agreement (in this instance, Train Dispatchers).

The respondent pointed out that conference was held in connection with the transfer of the work here involved, that is, from Dexter to Poplar Bluff, at a meeting held on January 5, 1950, which was attended by representatives of the Carrier, the Telegraphers and the Dispatchers, as was contemplated by the Agreement.

The respondent asserted that, as a result of this conference, it could properly transfer the handling of the CTC work from Dexter to Poplar Bluff and assign the same to the Dispatchers without any veto of such movement by the Telegraphers, as they seek here to invoke.

It was asserted that the performance of CTC work is not the exclusive work of any craft or class and that, when the CTC machines were operated at Dexter by the Telegraphers, such operation of these machines simply amounted to the assignment of such work by the Carrier to the Telegraphers and could, in no manner, be interpreted as conclusively contracting such work to them (the Telegraphers) to the end that such work was from such date forward the exclusive work of the Telegraphers.

The parties are in agreement as to the pertinent facts surrounding their differences here. The installation of CTC equipment has been in progress on the respondent's properties over a period of years. The number of such control installations have increased and the area of their effectiveness enlarged with the passing of time.

Immediately prior to the time in question, that is, January 18, 1952, the respondent maintained a CTC panel at Dexter, Missouri, the operation of which was handled by Telegraphers. Effective as of this date, the operation of the signals in the Dexter area was transferred to a CTC panel at Poplar Bluff. This action resulted in the abolishment (by the respondent) of second and third trick telegrapher positions and the assignment to and the operation of the CTC equipment at Poplar Bluff by Train Dispatchers.

The operation of CTC equipment has long been a bone of contention in the railroad industry. On this property, some of such equipment is presently operated by the Telegraphers, other equipment by the Dispatchers. The subject matter of this dispute was passed upon by the Third Division of the National Railroad Adjustment Board

in Award 641, which award in effect remanded the issue to the parties of interest for conference and agreement, the parties of interest being the Carrier, the Telegraphers and the Train Dispatchers. As a result of these conferences, a Memorandum of Agreement between the parties of interest was executed on February 1, 1939, which resulted in the allocation of CTC work to either the Telegraphers or the Dispatchers at installations located at Pacific, Leavenworth, Wagstaff, Cole Junction and Benton. Under and by virtue of this agreement, the operation of CTC equipment at these specified locations became the work of either the Train Dispatchers or the Telegraphers and can properly be said to have been then and there brought within the scope rules of their respective agreements insofar as those specified installations were concerned.

The Appendix of the February 1, 1939 Agreement provided that all CTC control units then installed in train dispatchers' offices and then operated by train dispatchers may continue to be assigned to Train Dispatchers at such offices. The Appendix to this agreement further provided that no extension of existing facilities in dispatchers' offices at points named therein, nor any subsequent assignment of dispatchers to operate CTC equipment, was to be made without prior conference between the three parties of interest.

It thus appears that the parties of interest hereto, by virtue of this Agreement, have in effect admitted that the operation of CTC equipment is not considered as being within the scope of the Agreements of either the Telegraphers or the Dispatchers. The allocation of this work between the two crafts at Pacific, Leavenworth, Wagstaff, Cole Junction and Benton lends further credence to this actuality.

We cannot concur with the assertion of the respondent here that the conference held on January 5, 1950, can properly be interpreted as complying with the Appendix to the Memorandum of Agreement dated February 1, 1939, as pertaining to the transfer of the CTC control work from Dexter to Poplar Bluff, inasmuch as the evidence of record shows that a conference with respect to this transfer of CTC control work from Dexter to Poplar Bluff was held on March 26, 1952, which was subsequent to, rather than prior to, the actual transfer of the work (January 18, 1952) as required by the Agreement.

While the Telegraphers and the respondent here recognized the existence of CTC work and negotiated job titles and wage rates to cover the performance of such work, it cannot properly be said that the Scope Rule of the Agreement as it was initially negotiated by the parties or as it presently reads can be interpreted as placing the operation of CTC control systems under the scope of the Telegraphers' Agreement. The performance of such work by the Telegraphers comes to them by assignment; their right to perform such work exclusively after its initial assignment is not contemplated by the Scope Rule. The same can properly be said of the Scope Rule of the Dispatchers' Agreement.

In light of the above and foregoing, it is the opinion of the Board that it (the Board) is in no position to hold that the work here involved is the exclusive prerogative of either the Telegraphers or the Dispatchers. We are of the further opinion that either the affirmation or declination of the claim with which we are here concerned is beyond the authority of this Board since to do so would be to accept primary jurisdiction of a jurisdictional dispute. This is beyond our authority. We are of the opinion that this issue was properly disposed of in Award No. 616, wherein it was held

"From the foregoing it is obvious that this Board is in no position to say with that degree of certainty which should back its awards, that the work here involved is the exclusive prerogative of either organization. It may

"be that it is competent for either to perform it, but there is quite insufficient basis to reach a conclusion that it might be done by one to the exclusion of the other.

"Consequently, the case presents a real jurisdictional dispute, in that it is rather over which organization should have the right to perform the work as now performed, than as to which does have such right. Of such disputes this Board has no jurisdiction.

"The case is accordingly remanded for conference between the three parties in interest to adjust if possible, by agreement, failing which their proper forum is the National Mediation Board."

FINDINGS: The Special Board of Adjustment No. 117, 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.

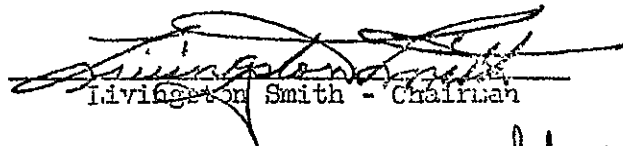
That this Board is without jurisdiction; and,


That the claim should be disposed of in accordance with the above Opinion.

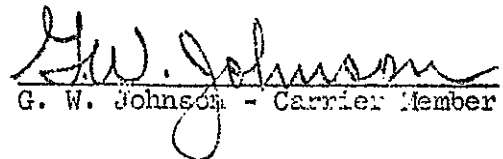
AWARD

Claim remanded in accordance with the above Findings and Opinion.

SPECIAL BOARD OF ADJUSTMENT NO. 117


Livingston Smith - Chairman


C. O. Griffith - Employee Member


G. W. Johnson - Carrier Member

St. Louis, Missouri
August 9, 1956

