

Under the  
RAILWAY LABOR ACT  
Special Board of Adjustment No. 226

Hearings April 9-30, 1958

Dallas, Texas

Award No. 1



PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIMS:

Group 1 ORT claims, consisting of twenty-seven individual claims, listed below, each for eight (8) hours' pay at the minimum rate for telegraphers account train orders copied by train crew employees on various dates during the year 1957, at all hours of the day and night, by use of train dispatcher's telephone at "blind siding" named in the claims, in violation of Rules 1 (a) and 1 (d) of the telegraphers' agreement, also.

Group 2 ORT claims, consisting of eighteen individual claims, listed below, each for eight (8) hours' pay at the minimum rate for telegraphers account train movement communications, such as hot box reports, set out requests, pick up instructions, tonnage discussions, "sights", and lineups for section foreman, all performed by train crew employees (except two section foreman lineups at Carney) on various dates during the year 1957, at all hours of the day and night, by use of train dispatcher's telephone at "blind sidings" named in the claims, in violation of Rule 1 (a) and 1 (d) of Telegraphers' Agreement.

A listing of the essential information in the twenty-seven claims in Group 1 follows:

<u>A</u> <u>ORT-Group 1</u> <u>Claim No.</u>	<u>B</u> <u>ORT</u> <u>Claimant</u>	<u>C</u> <u>Claimant's</u> <u>Station</u>	<u>D</u> <u>"Blind</u> <u>Sidings"</u>	<u>E</u> <u>Miles</u> <u>C to D</u>
2	Brimm	Adair	Green	3
4	Boyce	Stark	Kimball	2
6	Donaldson	Kincaid	Mildred	4
13	Miles	Pryor	Mazie	14
20	Extra Man	Unknown	Ringer	
26	Extra Man	Unknown	Ringer	
30	Extra Man	Unknown	Kimball	
31	Extra Man	Unknown	Kimball	
40	Hedgpeth	Unknown	Cook	130
41	Extra Man	Unknown	Navy	
42	Doss	Pryor	Green	6
43	Extra Man	Unknown	Ringer	8
45	Hoover	Muskogee	Oktaha	8
46	Extra Man	Unknown	Witcher	

4-27-22	Carter	Temple	Eddy	15
5-27-22	Browning	Temple	Eddy	15
8-27-22	Browning	Smithville	West Point	9
9-27-22	Nelson	San Antonio	Longhorn	15
10-207-22	Black	West	Elm Mott	9
12-27-22	James	Houston	Addicks	23
13-27-22	Thurman	Elgin	Compland	8
14-207-22	Extra Man	Unknown	Abbott	
15-27-22	Painter	Granger	Dunstan	39
18-27-22	Withers	Temple	Lorena	21
19-27-22	Painter	Granger	Dunstan	39
26-27-22	Carter	Smithville	Phelan	21
MU-13	Hoover	Muskogee	Canadian	44

A listing of the essential information in the eighteen claims in Group 2, follows:

A ORT Group 2 Claim No.	B ORT Claimant	C Claimant's Station	D "Blind Sidings"	E Miles C to D
11	Rlf. Opr.	Pryor	Smith	5
12	"	Pryor	Smith	5
14	"	Eufaula- McAlester	Canadian	9
15	"	Atoka- Durant	Cook	9
18	Extra Man	Unknown	Ringer	Unknown
19	Extra Man	Unknown	Ringer	"
21	Extra Man	Unknown	Carney	"
22	Extra Man	Unknown	Carney	"
23	Extra Man	Unknown	Utle	14
24	Extra Man	Unknown	Angola	7
25	Extra Man	Unknown	Ringer	3
28	Extra Man	Unknown	Kimball	8
29	Extra Man	Unknown	Evans	1
32	Extra Man	Unknown	Utle	8
36	Extra Man	Unknown	Tushka	5
39	Extra Man	Unknown	Smith	Unknown
1-27-22	Forbes	Taylor	Compland	8
16-27-22	Carroll	Georgetown	Weir	

#### POSITION OF EMPLOYEES:

The ORT directs its full attack against the use of so-called "blind sidings" for train order or other communications work by train crew employees. It contends that all such work belongs under the ORT agreement and that any and all such work performed at "blind sidings" by train crew employees violates the Scope Rule, Rule 1 (a) of the ORT agreement, and subjects the Carrier to the penalty of Section 1 (d) for each violation.

The following direct quotes from the ORT brief indicate its position:

"When Conductor Funkhouser entered the phone booth at Ringer, he opened up a telephone office on this date, and under Rule 9, 8 hours constitutes a minimum days work, and under Rule 1 (d) the penalty is stated, which is one (1) days pay at the minimum rate for telegraphers."

also

"....and if the management permits the use of the telephone, they open up an office at these so-called "blind-sidings" when they lift the telephone receiver and contact the train dispatcher to secure information, instructions, or otherwise, which has anything to do with the movement of trains, freight, passengers, or injured, or wrecks, or washout, etc."

POSITION OF CARRIER:

The Carrier contends that Rule 1 (a) does not cover train dispatching or other communications work performed at infrequent intervals by its train crew employees at "blind sidings" and that, even if Rule 1 (a) does cover the communications work performed at "blind sidings", it is not subject to the penalty provided in Rule 1 (d), which penalty is "...for the Agent or Telegrapher at that office," and there is no agent or telegrapher employed at any of the "blind sidings" included in the claims to receive a penalty.

FINDINGS:

The record discloses the following pertinent facts:

THE RULES, (Effective September 1, 1949):

Rule 1 - Employees Included:

- (a). These rules and working conditions will apply to Agent, Freight Agents, or Tickets Agents, Agent Telegrapher, Agent Telephoners, Relief Agents, Assistant Agent, where they have charge of station, take the place of or perform the work of an Agent Telegraphers, Telephone Operators (except Switchboard Operators), Towermen, Levermen, Tower and Train Director, Block Operators, Staffmen, Operators of mechanical telegraph machines, used for receiving and transmitting messages, Manager Wire Chiefs, Wire Chief Telegraphers, and Car Distributors where the position requires knowledge of the duties of a telegrapher of the handling of messages by telephone (synonymous terms), all of whom are hereafter referred to as employees.
- (d). Station of other employees at closed offices or non-telegraph offices shall not be required to handle train orders, block or report trains, receive or forward messages, by telegraph, telephone or mechanical telegraph machines, but if they are used in emergency to perform any of the above service, the pay for the Agent or Telegrapher at that office for the day on which such service is rendered shall be the minimum rate per day for Telegraphers as set forth in this agreement plus regular rate. Such employee will be permitted to secure train sights for purpose of marking bulletin boards only.

NOTE: (It is understood that "closed offices" also mean an office where other employees may be working not covered by this agreement, or an office which is kept open a part of the day or night.)

- (e). No employe other than covered by this Agreement and Train Dispatchers will be permitted to handle train orders at Telegraph or Telephone offices where a Telegrapher is employed and is available or can be promptly located except in an emergency, in which case the telegrapher will be paid for the call (and the dispatcher will notify the Superintendent so proper record and allowance will be made).

Rule 16 - Non-Telegraph Agency:

A non-telegraph agency as referred to herein is defined as an Agency at which no telegraph service is performed and carrying less than the telegraphers minimum rate of pay.

THE TELEPHONES:

From Carrier's Time Table No. 29 effective March 1, 1957, we have listed the following information to show that Carriers' main line system is completely serviced with train dispatcher telephones:

	Mileage	Points Listed	Phones	Phones Only	Phones and Telegraph
Northern Division	1122	189	189	94	95
Southern Division	1047	181	181	96	85
Total	2169	370	370	190	180

In Rule 23 of its aforesaid Time Table the Carrier Lists.

"Stations and Tracks not Shown on Schedule Pages":

Northern Division	64
Southern Division	54
Total	118

The Time Table does not indicate which of these 118 non-schedule points are equipped with telephones. But from other sources in the record, we find that some of these 118 non-schedule stations or tracks are equipped with train dispatcher telephones.

It was stated orally at the hearings that the Carrier constructed its initial and basic telephone system for dispatching trains by telephone in 1916. At many of the points on the Carrier's principal divisions, comprising a total of 2169 miles, there is a telephone at each end of the siding. Two phones are almost a necessity at the long sidings. As a rule the phones at the so-called "blind sidings" are sheltered in a small booth or box near the main line switch. The booths contain no other equipment. They contain no supplies of any kind. They are not lighted. Train crew employes copy train orders or other train dispatching instructions on miscellaneous sheets of paper they take to the booths with them. At night they use their lanterns to see the equipment and copy communications.

THE "BLIND SIDINGS":

Neither of the parties submitted exhibits or otherwise sought to inform us of the total number of the so-called "blind sidings" on the Carrier's system. We observe, however, that the total number of "blind sidings" is to be found in the 190 points in the "Phones Only" column, above, and in the additional 118 points not shown on the various train schedules in Time Table No. 29. We do not undertake to state exactly how many of these 308 points are "blind sidings" but the number is considerable.

Some of the points involved in the claims were "blind sidings" before the telephones were established in 1916. There were still other "blind sidings" prior to 1916 which are not involved in these claims. Most of the points involved in these forty-five individual claims have become "blind sidings" by reason of former active stations and telegraph offices having been closed by order of state utility commissions.

We have examined the list of positions in the eight agreements which have been negotiated and executed by the parties between the first one, effective January 1, 1914, and the last one, effective September 1, 1949. The schedule of positions in the Agreement effective August 1, 1928 shows sixty one-man stations which do not appear in the Agreement effective September 1, 1949. Obviously, these once active small railroad agencies have been closed by state public utility commission permission through the intervening years.

In addition the ORT lists in its statement of facts twenty-one small stations which appear in the ORT agreement of September 1, 1949 but which were closed in that same year by state public utility commission permission. Also in its brief the ORT states that, "sixty-nine positions were allegedly abolished since January 8, 1957, and which made some of these so-called "blind sidings."

Therefore, it appears that well over one-hundred points on Carrier's system have been closed since 1928, thus increasing the number of blind sidings year by year.

THE OPINION

It is admitted by the Carrier that all of the communications work was performed at the so-called "blind sidings", as alleged and described in the "STATEMENT OF CLAIMS". Our duty therefore is restricted to the question of whether or not the Carrier has violated its Agreement with the ORT.

It is necessary, first, to interpret Rule 1 (a), the Scope Rule.

If the Scope Rule does not bring the communications work admittedly performed at the so-called "blind sidings" by train crew employees within the purview of the Agreement, it follows that such work lies outside the Agreement and that neither Rule 1 (d) nor any other rule applies to such work. On the other hand, if the Scope Rule does bring the work described in the claims within the purview of the Agreement, it will be necessary to examine Rule 1 (d) and other rules to determine the issue of a penalty.

If Rule 1 (a) should have enumerated job classifications instead of job titles, we would unhesitatingly hold that all work described in each classification belongs absolutely and exclusively to the ORT employees. But the Agreement does not afford that opportunity either in Rule 1 (a) or elsewhere. Moreover, there is no evidence in the record that the parties ever had in mind during negotiations of numerous renewals of the Agreement between 1914 and 1949 that all work of whatsoever kind which has been customarily and traditionally performed by ORT employees is guaranteed to them absolutely and exclusively.

Such a guarantee would deprive the Carrier of its traditional custom to shift clerical work, ticket selling, baggage and freight work from ORT employes to others, and vice versa, at established stations or positions. It is inconceivable that the ORT itself in past years would have agreed to negotiate a rule requiring its members to perform all such work absolutely and exclusively. It might, more reasonably, have been expected that the parties would negotiate a rule giving ORT employes all communications work absolutely and exclusively. But there is no evidence that they have ever done that.

The Carrier constructed its system-wide train dispatching telephone facilities initially in 1916, and has expanded and improved them from year to year. It has large sums of money invested in these facilities. From the beginning in 1916 it has used its telephone facilities at so-called "blind sidings" to dispatch and assist its trains by the use of its train crew employes. This service has been performed by train crew employes at "blind sidings" in conjunction with ORT employes at other offices.

We assume that the Carrier has deemed itself entitled, as a matter of property right, to use its "blind sidings" telephone facilities to supplement its train dispatching by the use of train crew employes. In its Uniform Code of Operating Rules, the current issue of which became effective May 1, 1950, the Carrier has promulgated the following rule:

"206 (b). A train order may be transmitted to conductor or engineer, in which case such employe copying order will be governed by rules applicable to operators governing repetition and completion of train orders."

It is unreasonable to assume that the Carrier has ever consented that ORT employes have the right to perform any train communications work at "blind sidings". Before we should so rule, we would need to find express language in the Agreement to that effect. We should not put it there by implication.

ORT employes could not possibly perform the train order work at "blind sidings" now performed by train crew employes at all hours of the day and night. The physical facilities necessary for assigning ORT employes to communications work at "blind sidings" do not exist. Neither near by regularly assigned employes nor far away extra board employes could perform this work. A train in a "blind siding" would suffer incalculable delay if it had to depend on an ORT employe to come to its aid for train order instructions. We will not assume that the parties intended to negotiate contractual obligations impossible of practical performance.

Furthermore, if we should hold that all "blind siding" communications work, such as is described in the forty-five claims, belongs absolutely and exclusively to ORT employes, it would be equivalent to holding that the Carrier can not use its system-wide train dispatching telephone facilities at "blind sidings" except that it shall pay toll in the form of penalties to its ORT employes for such privilege. That the parties ever intended to establish such a contractual relationship is unbelievable. If we should render an opinion on this issue in favor of the claimants, we would put ourselves in the position of taking from the carrier the free right to use its own property. This would savor of confiscation of property without due process of law.

We are aware of the fact that train dispatching and other train communications work has been performed by Morse code telegraph operators at telegraph offices since the beginning of the railroad industry. They continued to perform this work at their

regularly established telegraph offices after the change-over to the telephones was made. There was no such work performed at "blind sidings" by anyone before the telephones came to the lines of this Carrier in 1916. Prior to the advent of the telephones to the railroad industry these isolated sidings were truly "blind sidings". They could neither see nor hear.

But as soon as the "blind sidings" were equipped with telephones, train crew employes began to use the telephones for train orders and other work necessary for train services and safety. That the Carrier expected so to use its "blind siding" telephone equipment is verified by Rule 206 (b), quoted above. Neither by express language nor by implication has the Scope Rule ever covered this communications work by telephone at "blind sidings". This work has no contractual relation to communications work in established ORT positions.

The record discloses that so-called "blind sidings" have been on the increase rapidly. Many small railroad stations which between 1900 and 1930, approximately, were listed in the ORT agreements as telegraph stations have been closed by the Carrier. Authority to close these stations has been granted by the state public utility commissions of Texas, Oklahoma, Kansas and Missouri. It is public policy to grant such authority when the stations are found to be no longer necessary to serve the public convenience and necessity.

These busy little stations of other years are not "closed offices" or "non-telegraph offices", such as are defined in Rule 1 (d). They are legally vacated and abandoned stations which formerly served the public interest. In response to the changing times they have become modern "blind sidings". And, they do not suddenly spring open into "stations" when train crew employes infrequently use them for train dispatching purposes.

There are no employes at any of the "blind sidings" included in the forty-five claims. Generally, the depots have been removed or torn down. The telephone equipment is now in small booths at either or both ends of the sidings. A complete change has been wrought in the physical nature of these active stations of other years. The old concept of a "railroad stations" no longer exists.

For the foregoing reasons, the communications work performed by train crew employes, as described in the claims, is not covered by the Scope Rule. It, therefore, lies outside the Agreement. It follows that Rule 1 (d) is not applicable to these "blind sidings" claims. "Blind sidings" are neither "closed offices" nor "non-telegraph offices."

We have described an epochal transformation at railroad stations.

The Carrier has not wilfully effected the closing and abandonment of these many, lively, little railroad stations to evade a labor agreement. Passenger and freight carrying motor vehicles, operated privately and for hire upon the public highways the planes, and the migration of population from rural areas to urban and industrial centers, have all combined to bring about a phenomenal change and decrease in business originating at or destined to small towns by rail. The diesel locomotive pulls 125 to 200 cars today compared with an average train composed of 50 to 80 cars pulled by steam locomotive two decades ago. These have been the primary causes for closing the railroad agencies and telegraph offices of an earlier day. This is the true story of the origin of many of today's "blind sidings".

We conclude and repeat, that infrequent train order and other train communications work performed at "blind sidings" by train crew employees is not now and never has been covered by the Scope Rule.

However, we observe that if the volume of communications work performed at any of the so-called "blind sidings" should increase in sufficient amount as to warrant establishing an ORT position, a question of fact could be raised by way of grievance to determine that issue.

We observe, too, that the Scope Rule, and Rule 1 (d) have applicability to the communications work of individual positions at established railroad station but not to all railroad communications work in a general way. "Blind sidings" are not "positions." If any of them should become "positions" by Carrier and ORT negotiations or by Board findings they would cease to be "blind sidings."

As to other "blind sidings" awards, we have this to say: Only a few of them when differentiations are accurately made and analyzed, conflict with our own findings and opinion. Most of them, directly and affirmatively, support our own findings and opinion.

We have reviewed the vicissitudes of a vanishing vocation which had its birth in the art of Morse Code telegraphy. Nostalgically, we find that the real artists of the brass key and sounder have nearly all stepped silently away from the telegraph tables. The mysterious clicking of their dots and dashes at the railroad stations has been all but silenced. For more than a century they performed skillfully. They were true artisans. They served the public well. "73" to them!!!

AWARD:

The claims are denied.

/s/ Daniel C. Rogers  
Daniel C. Rogers, Chairman  
Fayette, Missouri

Dissenting as shown below  
W. I. Christopher, Employee Member  
Deputy President, O. R. T.  
3860 Lindell Blvd.  
St. Louis 8, Missouri

/s/ A. F. Winkel  
A. F. Winkel, Carrier Member  
Ass't. General Manager  
Missouri-Kansas-Texas Lines  
Dallas, Texas

Dallas, Texas

August 1, 1958

DISSENT to Award No. 1 of M-K-T Special Board of Adjustment No. 226.

The undersigned dissents from the Findings, Opinion and Award of the majority for the following reasons:



The claims represent 27 instances where conductors and others copied and handled train orders, 16 instances where trainmen reported their trains and performed other communication service in connection with the movement of their trains, and two instances where a section foreman copied lineup messages. At the outset it is alleged that each violation occurred at a "blind siding." This is the term employed by the Carrier throughout its correspondence and submissions before the Board. No where in the Telegraphers' Agreement, the Carrier's transportation Book of Rules or its timetables is there any mention of a "blind siding." Quite correctly did the Award state that "Neither of the parties submitted exhibits or otherwise sought to inform us of the total number of the so-called 'blind sidings' on the Carrier's system." Of course, the reason for that is that there is no such a thing as a "blind siding", by Agreement, by Carrier's Rules, or Carrier's timetable. Notwithstanding, the majority proceeds to find somewhere between 190 and 308 blind sidings although none had previously existed by agreement, rules or timetable.

The majority also concluded that communication work had been performed by Morse code operators at telegraph offices since the beginning of the railroad industry; that they continued to perform this work at their regularly established telegraph offices after the change-over to the telephones was made; that there was no such work performed at "blind sidings" by anyone before the telephones came to the lines of this Carrier in 1916; and that prior to the advent of the telephones to the railroad industry these isolated sidings were truly "blind sidings" - that they could neither see nor hear. But suddenly the majority presents us with a new definition of a "blind siding," a so-called "modern blind siding," which is represented to be any station on the Carrier's line where it chooses not to employ a telegrapher and in lieu thereof engages a conductor or some other person not covered by the Agreement to perform the communication work in connection with handling train orders, messages, or reports of record at such points. Carrier's representative stated that even though a station existed in a community of 50,000 persons, and the Carrier discontinued all telegraphers' positions, such a point thereupon became a "blind siding" regardless of any other factor.

Apparently the majority has so held in this award. Observe first the premise of what it declared to be a "blind siding" - a station where no communication obtained. Then the evolution into a "blind siding" where a telephone was installed for emergency purposes only but which in time began to be used when no emergency existed. But keep in mind that these were the "blind sidings" which the majority now says that "Neither by express language nor by implication has the Scope Rule ever covered this communications work by telephone at 'blind sidings.'" This work has no contractual relation to communications work in established ORT positions."

By the same token, however, the majority fails to reconcile the contractual relation to communication work covered by the Scope Rule at points which were not blind sidings where the work was actually bargained for and listed in the Telegraphers' Agreement as entities of positions. It states that "Many small railroad stations listed in the ORT Agreements as telegraph stations have been closed by the Carrier," that authority to close these stations was granted by state public utility commissions when they were found to be no longer necessary to serve the public convenience and necessity. Of course, the closing of an agency station with the approval of a state commission has nothing whatever to do with the operation of the Scope Rule.

The Telegraphers' Agreement is a collectively bargained agreement made pursuant to the Railway Labor Act over which a state commission has no jurisdiction. Carrier did not close such stations insofar as the communication facilities were concerned. It retained them and the record indicates it continued to use them in the Carrier's interest whenever it found it beneficial to do so. It is quite evident that the Carrier did not close these stations after the several commissions authorized it to do so. Under the Telegraphers' Agreement they are not "modern blind sidings" as alleged by the majority but are the same stations they always were with respect to handling train orders and other communications. The handling of train orders and other railroad communications has never been matters of public convenience and necessity.

The inconsistencies of the majority are further revealed by the following statement:

"We conclude and repeat, that the infrequent train order and other train communications work performed at 'blind sidings' by train crew employees is not now and never has been covered by the Scope Rule

However, we observe that if the volume of communications work performed at any of the so-called 'blind sidings' should increase in sufficient amount as to warrant establishing an ORT position, a question of fact could be raised by way of grievance to determine that issue."

The majority, however, fails to state how many "infrequent" train orders would be necessary to disestablish a "blind siding" in favor of "an ORT position." In this dispute we found that many of the points which the majority casually refer to as "blind sidings" are stations where train orders and other communication work were handled by telegraphers since the time the railroad commenced operation. The positions have been listed in one agreement after another. Yet the majority proclaims that such work now performed by train crew employees "is not now and never has been covered by the Scope Rule."

It is argued that "ORT employees could not possibly perform the train order work at 'blind sidings' now performed by train crews at all hours of the day and night; and that a train in a 'blind siding' would suffer incalculable delay if it had to depend on an ORT employee to come to its aid for train order instructions." From this statement, and others as well, it is plain that the majority gave no consideration to the fact that there exists a collectively bargained agreement between the parties. How could telegraphers have performed the train order or other communication work unless it was tendered them? No effort was made by the Carrier in a single instance to utilize the services of a telegrapher. It cannot be denied that telegraphers handled all of the work at these points until their positions were abolished. Inasmuch as their positions were reopened on the dates specified and communication work was performed without the tender of it being made to claimants a proper cause of action for being deprived of work opportunity followed. Claimants have suffered damages to earnings which would otherwise be theirs under a craft and class agreement.

That all thinking of the majority was distinctly apart from the Agreement is also borne out by its following statement:

"Furthermore, if we should hold that all 'blind siding' communications work, such as is described in the forty-five claims, belongs absolutely and exclusively to ORT employes, it would be equivalent to holding that the Carrier can not use its system-wide train dispatching telephone facilities at 'blind sidings' except that it shall pay a toll in the form of penalties to its ORT employes for such privilege. That the parties ever intended to establish such a contractual relationship is unbelievable. If we should render an opinion on this issue in favor of the claimants, we would put ourselves in the position of taking from the carrier the free right to use its own property. This would savor of confiscation of property without due process of law."

Without any question of doubt the majority has simply cast aside the Agreement in arriving at this conclusion. Plainly, there appears a woeful lack of knowledge that this Board had before it two parties to a contract, both equal under the Railway Labor Act. Instead of applying the Agreement to the circumstances of the violative acts we find the majority asserting that to find for the employe claimants would amount to "confiscation of property without due process of law." What other due process of law is provided the parties than the Railway Labor Act? And what about the property of the claimants under the Agreement who were denied the fruits of seniority - their bread and butter, if you please? They have brought their claims and grievances to a legal tribunal established under the Railway Labor Act and a finding in favor of the claimants would no more smack of "confiscation of property" than that of the contrary finding now proclaimed.

The award represents a departure from scores of awards of the Third Division of the National Railroad Adjustment Board. It is so full of contradictions that page after page would be required to deal with them. In one breath the majority holds that these points were ORT positions listed in the Agreement and in the next that they are blind sidings. It proceeds to completely divorce the Morse telegrapher from his exclusive jurisdiction to handle train orders by either telegraph or telephone. It overlooks entirely the fact that none of the orders or messages were handled as a result of an emergency condition. The Agreement comprehends that employes covered by the Telegraphers' Agreement will, as a class and craft function, handle all train orders except in cases of emergency and even then they are to be paid for the intrusion into their jurisdiction. Award after award of the Third Division of the National Railroad Adjustment Board has held that the copying of train orders is work reserved exclusively to those coming under the Telegraphers' Agreement. The scope rule grants them this right.

For more than 40 years the Telegraphers on this Carrier have bargained all communication work into their agreement whether performed by telegraph, telephone or mechanical telegraph machines. The only exceptions are in cases of emergency. Where entities of positions obtained they were specifically listed by title and rate of pay. Simply because the Carrier declared the positions to be abolished and thereafter allowed persons other than those covered by the Agreement to perform the work at these locations the majority transforms these locations into "blind sidings" although the same work continues to be performed with the same instruments. The neutral member of this Board is also an eminent member of the legal profession. We would be curious to know just what his position would be in the event some layman in a "blind siding" community would take it upon himself to engage in the practice of law simply because no lawyer resided at that

point. We suspect that he could quite conscientiously agree that the lawyer's "scope rule" was being violated regardless of the locale being of the "blind siding" variety.

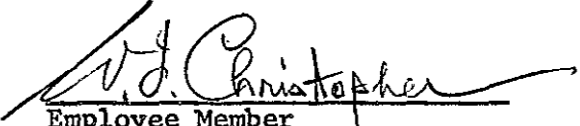
The majority states that "blind sidings" are not "positions" but if any of them should become "positions" by Carrier and ORT negotiations or by Board findings they would cease to be "blind sidings." These are strange words coming in the face of the fact that the now proclaimed "blind sidings" have already been negotiated into the Agreement as positions which the Carrier has failed and refused to fill when telegrapher's work is to be performed. Instead it has utilized the services of others to perform the identical work telegraphers previously performed on such positions. Just how many times must a position be "negotiated" into an agreement in order for it to be subject to the scope rule? And if so negotiated into the agreement is the Carrier free to fill it thereafter with an employe outside of the Agreement as has been done in the instances cited in these claims?

Without any question of doubt it is conclusively evident that the majority has grievously erred in viewing the Agreement as nothing more than a mere contract of employment for Morse telegraphers rather than a craft and class agreement made under seal pursuant to and legalized by the Railway Labor Act. The Agreement involves valuable property rights in the employes covered thereby. Outstanding are the provisions affecting seniority and their rights to be used in accordance with seniority and qualification. The recognition of these rights is not unattended by obligation on the employes' part; they are required to and do hold themselves available to be called in their orderly turn and are subject to severe discipline if they fail to respond. The bargained arrangement is that the Carrier will tender all such work within the scope of the classes set forth in the Agreement and the employes, in turn, agree to perform all of such work according to the terms of the Agreement. Thus these rights and obligations arising under the Agreement are reciprocal. It is not reasonable to suppose that the great volume of work of the character comprehended by the Agreement would be subject only to a one-sided option in favor of the Carrier that it alone might exercise or not, according to whichever way the advantage laid. So long as claimants held themselves available to perform work of the nature demanded of the craft there is an implied obligation on the part of the Carrier to accord all such employment to those employes having seniority rights in relation to the work.

The only reasonable interpretation and manifest intention of the Agreement was to embrace all communication service to be performed on the railroad for the Carrier's benefit. The only exception to that intention is written in the rules of the Agreement and confined to cases of emergency. There were no emergencies involved in the cited instances, therefore the Agreement was violated. We know that if there had been a signal failure at any of these declared "blind sidings" a signal maintainer would have been dispatched; that if there had been a broken rail the section men would have been called; and if a car had been set out with a hot box a car man would have been sent to make the necessary repairs. It is exceedingly difficult to reconcile such facts with the position taken by the majority that a telegrapher is not entitled to perform the work of his craft and class at the same point. It is dead certain that if he should be ordered to such a station and refused to go on the ground that it was "blind siding" he would be removed from service.

Earlier we have said that the majority grievously erred in construing the Agreement as nothing more than a contract of employment for Morse telegraphers. This conclusion is amply supported by the final paragraph of the Opinion wherein the majority deplores the fact that "the real artists of the brass key and sounder have nearly all stepped silently away from the telegraph tables;" that "The mysterious clicking of their dots and dashes at the railroad stations has been all but silenced." This requiem, we think, is slightly premature because all of the claimants here were Morse men. Fifty thousand Morse telegraphers can still answer their "call" regardless of any retrospective myth to the contrary. In these instances, claimants did not step silently away from the telegraph tables but were shoved away instead; from the work which has been theirs since the construction of the railroad, by tradition, custom, practice and agreement. If this Award must include an epitaph on the rights of these men then it should be in keeping with the deed of its authors:

Their fate is here in emblem shown,  
They asked for bread and received a stone.

  
Employee Member