



B E F O R E
SPECIAL BOARD OF ADJUSTMENT NO. 226
Dallas, Texas

AWARD NO. 45
CLAIM NO. 83
BU-4625-22

THE ORDER OF RAILROAD TELEGRAPHERS)

Vs.)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY)
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS)

STATEMENT OF CLAIM:

1. The Carrier violated the agreement between the parties when, commencing November 1, 1958, it declared "DO" St. Louis Relay Office in the Railway Exchange Building to be abolished, closing the position of Manager-Wire Chief, and relocated the mechanical telegraph machine (teletype) in the Freight Traffic Department, in the same building and on the same floor, and assigned the operation of said telegraph machine to employees other than those covered by the agreement.
2. By reason of such declared abolishment and the violative transfer of work and operation of said telegraph machine Carrier brought about the displacement of Manager-Wire Chief W. F. Ellisor as of the date of abolishment which caused him to exercise his seniority and displace a junior employee in the Waco, Texas relay office, resulting in other displacements adversely affecting other employees in seniority order.
3. The agreement has also been violated at St. Louis when, effective November 1, 1958, Carrier permits or requires persons other than the displaced Manager-Wire Chief to transmit and/or receive messages and reports by telephone and mechanical telegraph machine in order to implement the abolishment of said position.
4. Carrier further violated the agreement commencing November 1, 1958, when, with the alleged abolishment of the Manager-Wire Chief's position in St. Louis it transferred the residue of the communication work performed in "DO" St. Louis Relay Office, such as not handled directly by other persons or employees at that office, and required the telegraphers located at Baden, Missouri, to handle such work previously performed at "DO" office without adjusting their rate of pay.

5. Carrier again violated the agreement when it permitted or required an employee other than the Wire Chief at Parsons, Kansas to test wires during a period when the Wire Chief was not on duty but available, specifically at 2:40 p.m. and again at 6 p.m., Sunday, November 16, 1958.
- 1(a) The Carrier shall now be required to reassign the operation of the mechanical telegraph machine (teletype) to an employee covered by the Telegraphers' Agreement.
 - 2(a) The Carrier shall be required to restore Mr. W. P. Ellisor as Manager-Wire Chief in St. Louis and all other employees adversely affected by displacements to their former assignments together with pay for all wages lost by reason of such displacements.
 - 3(a) The Carrier shall be required to restore the position of Manager-Wire Chief in St. Louis and restore to said position the work of transmitting and receiving messages and reports by telephone and mechanical telegraph machine.
 - 4(a) The Carrier shall, effective November 1, 1958, be required to adjust the rates of the telegraphers at Baden, Missouri, equal to the rate allowable for telegraphers in the St. Louis Relay office so long as the Baden telegraphers are required to perform work formerly handled by the Relay Office.
 - 5(a) The Carrier shall be required to pay the Wire Chief at Parsons, Kansas a "Call" of three hours at time and one-half rate for each instance that an employee other than wire chief was used to test wires at that point on Sunday, November 16, 1958.

FINDINGS:

The appeal was timely taken within 60 days. This claim consists of five separate complaints. Relief is requested in each.

We deem it in the interest of simplicity to restate together the five parts of the claim and the relief sought in each. Thereupon, we shall dispose of each of the five parts of the claim in order.

Our restatements and findings are, as follows:

1. Effective November 1, 1958, the Carrier abolished its (ORT) relay office ("DO") in the Railway Exchange Building in St. Louis. The office was equipped with telegraph and one teletype machine. One telegrapher, a Manager-Wire Chief, worked from 8 a.m. to 5 p.m., one hour for lunch, Monday through Friday, excluding rest days and designated holidays.

The Carrier dismantled its telegraph equipment and moved the single teletype machine from the abolished "DO" office to the Freight Traffic Office (not

(an ORT office) on the same floor. Instead of connecting the teletype machine into the Carrier's communications lines to send and receive messages, generally, the Carrier connected it into a line leading to the Baden (St. Louis) Yard Office on the receiving side only. It authorized traffic office personnel to tear off messages from the teletype machine to deliver to addressees.

1a. For the above alleged violation of the ORT agreement, it is demanded that the Carrier shall now "be required to reassign the operation of the mechanical telegraph machine (teletype) to an employee covered by the Telegraphers' Agreement."

Generally speaking, management of a public utility has not only the right but the duty to conduct its service economically and efficiently. And, regardless of the wisdom of Carrier action, This Board does not have authority to interfere with an abolishment proceeding in the absence of some provision in the Telegraphers' Agreement indicating the parties had agreed not to effect abolishments.

Communications work at the "DO" office had been dwindled to where one senior telegrapher, a manager-wire chief, was on duty. There was very little "wire chief" work left. It and the remaining communications work was reassigned to other offices, as herein discussed later.

Did the Carrier move the "DO" office "just around the corner" into the Traffic Office as a subterfuge to escape its obligation to employ a telegrapher to operate the teletype machine, which was connected with the Baden Yard Office on the receiving side only? We find that it did not.

Even if there was more than a shade of doubt in our minds, that the work of tearing off messages on the receiving side of the teletype machine consisted of telegraphers work under the Scope Rule, we would not be authorized to find, that such work belongs to telegraphers exclusively. The work being performed by traffic office employees, as a mere incident to their traffic work is the simplest of work. The teletype machine in question is not being used by them for "transmitting and receiving messages." It is controlled by the telegrapher at Baden Yard and functions as a convenient type of messenger service for the Baden Yard telegraph office. The Carrier has a right to use this facility as a messenger service between Baden and St. Louis.

Accordingly, no penalty or other action in favor of the claimant is justified.

2. By abolishing the "DO" office, effective November 1, 1958, as described, it is contended that the Manager-Wire Chief, W. P. Ellisor, the sole remaining employee at "DO" was compelled, in violation of the Telegraphers' Agreement, to exercise his seniority and did thereby displace Harry L. Turner, a junior employee at Waco, "resulting in other displacements," including Miss Clara Spears.

2a. For such alleged violation of the agreement, it is requested that the Carrier shall "restore Mr. W. P. Ellisor as Manager-Wire Chief in St. Louis and all other employees adversely affected by displacement to their former assignments together with pay for all wages lost by reason of such displacements."

Since we hold that the abolishment of the "DO" office was not a violation of the Telegraphers' Agreement, the series of displacements mentioned were normal and legal procedures. This part of the claim will be denied also.

3. Under this the third part of the claim, it is alleged that the Carrier implemented the abolishing of "DO" by requiring employees in the Traffic Office and elsewhere to "transmit and/or receive messages and reports by telephone and mechanical telegraph machine."

3. It is requested that the Carrier "be required to restore the position of Manager-Wire Chief in St. Louis and restore to said position the work of transmitting and receiving messages and reports by telephone and mechanical telegraph machine."

This part of the claim, too, is based on the alleged violation of The Telegraphers' Agreement when the Carrier abolished the "DO" office in St. Louis. It will be denied.

4. Effective November 1, 1958, the Carrier, it is alleged, effected a consolidation or merger of the "DO" office with the telegraph office at Baden Yard "when ..it transferred the residue of the communications work performed in "DO" St. Louis Relay Office" to the Baden Yard office.

4a. It is therefore claimed that, according to Rule 6 (b), the telegrapher positions at Baden Yard are entitled to the "DO" rate of pay, effective November 1, 1958

Rule 6 (b) provides:

"When two positions are consolidated, the higher rate will apply."

In his letter of January 12, 1959, Mr. R. C. Hassel, Assistant Engineer-Communications informed General Chairman W. C. Thompson that:

"The teletype machine in the Traffic Office in St. Louis is equipped only for receiving messages and is under the complete control of the sending office..."

Similar descriptions of the work in issue were included in Mr. Hassel's letters of January 21, February 5 and 10, 1959

The sending office mentioned by Mr. Hassel is the telegraph office at Baden Yard. The teletype machine mentioned by him is the same teletype machine which was formerly installed in "DO" for both sending and receiving messages and other communications. Moreover, there were telegraph instruments at "DO" They were dismantled when "DO" was abolished.

Thus, normal reasoning convinces us that a substantial portion of the communications work formerly performed by the Manager-Wire Chief at "BO" during his 6 a.m. to 5 p.m. assignment, Monday through Friday, has become merged or consolidated with the position of the telegrapher at Baden Yard working comparable hours. Former "DO" work can be identified at Baden Yard.

Mr. C. A. Orr's name appears in the record as the first trick telegrapher at Baden Yard. Names of telegraphers on other tricks at Baden Yard, if any, are not included in the record. Moreover, the proof of consolidation of "DO" communications work with Baden Yard communications work seems reasonably limited to the first trick at Baden Yard. Therefore, we shall dismiss any claim of consolidation of "DO" with tricks at Baden Yard other than the first trick.

In applying Rule 6 (b), it is necessary to determine from the Telegraphers' Agreement the correct "higher rate" to apply to the first trick at Baden Yard. We find that the Manager-Wire Chief rate at "DO" is a rate for a higher classification of work than is being performed by the first trick telegrapher at Baden Yard under the consolidation. Moreover, "wire chief" work was transferred to Parsons, not to Baden Yard.

The telegrapher rate at "DO" was a "higher rate" than the first trick telegrapher rate at Baden Yard. Therefore, the "higher rate" under Rule 6(b) is the "higher rate" that would have been paid to a telegrapher at "DO" at the time "DO" was abolished on November 1, 1958.

Under Rule 6(b), Mr. Orr's "higher rate" should be adjusted as of November 1, 1958.

5. The fifth and final portion of the claim alleges that the Carrier violated the Telegraphers' Agreement when it permitted or required employees other than the Wire Chief at Parsons to test wires when the Wire Chief was not on duty but available.

5a. The claim is for a "call" of three hours at time and one-half rate for each of the two alleged violations on Sunday, November 16, 1958.

At the time "DO" was abolished "wire chief" work at that office was transferred to Parsons, but since the Parsons "wire chief" rate of pay is higher than the "DO" rate of pay for the same kind of work, there is no contention that Rule 6(b) applies.

There is no dispute about the "wire chief" work being performed on November 16, 1958, as alleged by the ORT. Moreover, there is no dispute on the ORT contention that "wire chief" work belongs under the Scope Rule, as a general principle of contract law.

The Carrier contends, however, that the employee who performed the "wire chief" work in dispute on November 16, 1958, was an "official", with the title "Assistant Communications Engineer". Carrier states he has "the authority to call upon telegraphers and wire chiefs to make changes desired; this work has been done by Communications Engineers, Assistant Communications Engineers and Supervisors in the past." The Carrier also states that "... yours is the burden of proof, and you are required to point to a rule in the agreement which prohibits officials of the Carrier from performing the duties of testing wires, putting up patches, etc., and this you have not done." The ORT, on the other hand, contends he was an Equipment Installer, an ordinary employee being used to encroach upon "Wire chief" work belonging to telegraphers under the Scope Rule of their agreement.

An employee, under the guise of an official title, can not encroach upon work given by contract to members of a craft. The record, by inference, permits

the impression that there is merit in the contentions of the ORT. The ORT moreover contends that the violation of its agreement is not limited to the two instances occurring on November 16, 1958

However, the ORT has not sustained the burden of proof. It has not given the Board sufficient evidence to find, either, (a) that the offender or offenders are not officials, or, (b) that, even if they are officials, they are engaged in performing work, repeatedly, not in pursuance of supervisory duties. For such reasons Parts 5 and 5a of the claim are dismissed.

AWARD:

Part 1 of the claim is denied.

Part 2 of the claim is denied.

Part 3 of the claim is denied.

Part 4 of the claim is sustained to the extent specified in the Findings.

Part 5 of the claim is dismissed.

s/ Daniel C. Rogers
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Concurring as to Claim 4 only
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