Award No. 1
Case No. 1
Docket No. 1
ORT FILE: 2996

SPECIAL BOARD OF ADJUSTMENT NO. 553

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

ROY R. RAY, Referee

STATEMENT OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines), that:

1. The Carrier violated the Agreement between the parties hereto when, effective January 16, 1959, it declared abolished the second shift telegrapher-clerk position at Avon, California without in fact abolishing the work thereof and required an employe of another craft and class, assigned at Walnut Creek, California, to travel to the Avon agency and there perform the work of the purportedly abolished position.

2. The Carrier shall, because of the violation set out above, pay the senior idle extra telegrapher, or in the absence of an available telegrapher, A. G. Kettemen, the former occupant of the second shift telegrapher-clerk's position at Avon, California, a day's pay at the rate of the nominally abolished second shift telegrapher-clerk's position at Avon, California, for each day Monday through Friday, commencing January 16, 1959 and for each day Monday through Friday thereafter so long as the violation continues."

OPINION OF BOARD:

For several years prior to January 16, 1959 the assignments at Avon, California consisted of an Agent-Telegrapher whose hours were 8 a.m. to 4 p.m. and a Telegrapher-Clerk with hours of 1 p.m. to 9 p.m. Effective January 16, 1959, Carrier abolished the Telegrapher-Clerk position and changed the hours of the Agent-Telegrapher to 10 a.m. to

6 p.m. Carrier also assigned a Freight-Clerk from Walnut Creek (a few miles distant) whose hours were 9 a.m. to 6 p.m., to work approximately five hours of his shift at Avon each afternoon assisting the Agent-Telegrapher in the performance of clerical duties. Thereafter, and until March 1, 1964, all of the communications work was performed by the Agent-Telegrapher and the clerical duties were performed by either the Agent-Telegrapher or the Clerk. Communications work late in the day had been reduced due to a change in train schedules and when any such work was required after 6 p.m. it was performed by the Agent-Telegrapher on overtime.

The Organization contends that the assignment of the work formerly performed by the Telegrapher-Clerk to the Freight Clerk from Walnut Creek was a violation of the Agreement. In its submission the Organization relied upon some thirteen different rules of the Telegraphers' Agreement. At the hearing before this Board, however, reliance was placed chiefly upon Rule 1 (Scope). It is argued that the work remaining at Avon when the Telegrapher-Clerk position was abolished belonged to the Telegraphers and could not be assigned by Carrier to persons outside the Telegraphers' Agreement. This position is based upon two propositions: (1) A long and established practice at Avon for Telegraphers to perform this work; (2) With the abolition of the Telegrapher-Clerk position Avon became a one-man station and all work remaining there belonged to the Agent.

Carrier denies any violation of the Agreement. It asserts that the work performed by the Clerk at Avon on a part time basis following the abolition of the Telegrapher-Clerk position was entirely

clerical in nature and was the same type of work performed at Avon by a Freight Clerk from 1941 to 1948, and the same type as that performed by clerical employes elsewhere on this Carrier and in the railroad industry generally. It contends that there is nothing in the Agreement nor any practice which prevents Carrier from abolishing a Telegrapher position when the Telegrapher work disappears and assigning the remaining clerical work to clerks or others. It says that the custom and practice in the industry as well as awards of the National Railroad Adjustment Board support this position.

A brief history of the assignments at Avon will be helpful to a consideration of the question before the Board. The Telegrapher-Clerk position was first established at Avon in 1924 and took care of the late afternoon business of handling train orders, preparing work lists for local freight and doing various kinds of clerical work as designated by the Agent. The purpose was to assist the Agent-Telegrapher during peak periods and to do required telegraph work when the Agent was absent. During 1933 to 1935 when business dropped off the position was abolished. It was re-established and abolished at other times according to the needs of the service. The position was re-established in 1941 and continued until January 16, 1959. During the period when Telegrapher-Clerk was assigned Carrier operated two local freight trains to meet the requirements of an Oil Company located at Avon. The main telegraphic work was handling train orders and work in connection with the meets of these trains. During the war and the period following it, i.e. from 1941 to 1948, oil

production and freight work greatly increased. Carrier established an additional position of freight clerk at Avon to help with the increased work load. He did the same kind of work as the Telegrapher-Clerk except that he did not handle train orders or do other telegraphic work.

In June 1958, the afternoon train serving the Oil Company plant was discontinued and the morning train was rescheduled to operate later in the day. This eliminated the meeting of trains and Carrier decided that the Agent-Telegrapher could handle all telegraphic work during his regular assigned hours by changing them so that he got off at 6 p.m. Since the Freight-Clerk at Walnut Creek, several miles away, had less than four hours of clerical work, Carrier decided that he could perform the afternoon clerical work at Avon. So as of the close of work January 15, 1959, Carrier abolished the Telegrapher-Clerk position at Avon and assigned the Freight-Clerk at Walnut Creek to Avon to work some 4 to 5 hours in the afternoons performing clerical duties formerly performed by the Telegrapher-Clerk. The Organization does not contend that he handled any communications work. This Clerk continued to do this work until March 1, 1964, when a rearrangement of local freight trains required train orders for movement about 8:30 p.m. In order to handle this situation Carrier discontinued the Clerk's position and re-established the Telegrapher-Clerk's job.

The precise question at issue in this case has never been passed upon by the National Railroad Adjustment Board and none of the

Awards cited by the parties cover the exact situation here. The language in some of them is persuasive but many of the Awards have little or no relevance to this case.

The Scope Rule is general in character. It designates the employes that are within the Telegraphers' Agreement but does not set forth their duties. It is well settled that in determining whether the Telegraphers are entitled to particular work reference must be had to custom, tradition and practice on the property. See recent Awards: 10493, 10581, 10604, 10918, 10951, 10970 of the Third Division. The Organization has the burden of showing that by custom and practice on the property the work in question has been performed by Telegraphers to the exclusion of others. Award 5719.

It has failed to sustain this burden. The work assigned to the Clerk at Walnut Creek was admittedly clerical in character. There is no proof in the record of a custom or practice on this property for the Telegraphers to perform this work exclusively. In fact, the evidence shows that this type of work was performed by a Clerk at Avon from 1941-1948 and is performed by clerical employes elsewhere on this property.

It is true that the work was performed at Avon by the Telegrapher-Clerk for many years prior to 1959 but this does not establish a right to the work. The words of Referee Carter in Award 7031 are pertinent here: "Where work may properly be assigned to two or more crafts, an assignment to one does not have the effect of making it the exclusive work of that craft in the absence of plain

language indicating such an intent. Nor is the fact that work at one point is assigned to one craft for a long period of time of controlling importance when it appears that such work was assigned to different crafts at different points on the property within the scope of the Agreement." In the case involved in Award 7073, Carrier abolished one of two telegraphic positions at a certain station, assigned the remaining telegraphic work to the other telegrapher position (Agent-Telegrapher) and distributed the clerical work between two Clerks at the station. This assignment was held by Referee Carter to be entirely proper.

The only case cited by either party with a fact situation somewhat similar to the present case is Award 6363. There one of the telegrapher positions was abolished, the hours of the other telegrapher changed so that he could take care of all train orders and communcation work during his regular shift, and the other duties of the abolished position (clerical and other station work) were assigned to persons outside the Agreement. The Organization contended that this work belonged to it since it had been performed by Telegraphers over a period of years. In rejecting the claim Referee McMahon said, "This Board has consistently held in many cases that when a position has been abolished, as here, and the remaining duties sometimes performed by Telegraphers, are of a clerical nature, it cannot be said that such clerical duties belong exclusively to the Telegraphers."

The Organization has relied upon Award 7409 by Referee McMahon. While that case does tend to support their contention, we regard it as

inconsistent with his earlier Award 6363, which we consider the better reasoned decision. Furthermore, in Award 7409 the Referee found an established custom and practice for Telegraphers to perform the work. We can make no such finding here.

The Organization has argued that with the abolition of the Telegrapher-Clerk position Avon became a one-man station with all the work belonging to the Agent, and contends that even clerical work remaining could not be assigned to persons outside of the Agreement. It has relied upon Awards 6975 and 7590. In our judgment this argument has no merit in the present case. In the first place, the claim is not made on behalf of the Agent for overtime as in Award 7590. In that case no position had been abolished. The question involved was the Agent's right to overtime work outside his regular assigned hours. In the instant case the work was performed by the clerk during the same hours the Agent-Telegrapher was on duty. Presumably he could not have handled it in addition to his regular duties. No work to which he was entitled was taken from him. Furthermore, we do not consider this a one-man station situation as that term has been used in some Awards. After the Telegrapher-Clerk position was abolished, two persons were assigned to the station--an Agent-Telegrapher on a full shift and a Clerk on a part-time shift. Without passing upon the validity of the one-man station principle, we consider it inapplicable here.

For the reasons expressed we conclude that the assignment of work by Carrier was entirely within its rights.

SBA 553
Awd 1

FINDINGS: There was no violation of the Agreement.

AWARD

Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 553

Roy R. Ray, Chairman

D. A. Bobo, Employe Member

L. W. Sloan, Carrier Member

San Francisco, California

November 9, 1964