

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Texas and Pacific Railway that the agent at Pelican, Louisiana, be paid a call for each Sunday and holiday on which the carrier has required persons not covered by telegraphers' agreement to perform work assigned to the agent on week days."

STATEMENT OF FACTS: In their ex parte submission the General Committee stated the facts as follows:

"An agreement bearing date April 1, 1928, is in effect between the parties to this dispute.

"The agency position at Pelican, Louisiana, involved in this dispute, is covered by telegraphers' said agreement.

"Prior to April 17, 1932, the agent at Pelican was assigned a call on Sundays and holidays to meet Train No. 25 to handle the U. S. Mail and perform the necessary station work.

"Effective April 17, 1932, the agent was instructed to discontinue meeting this train on Sundays and holidays; and the work of handling the U. S. Mail was contracted to an outside party not in the employ of the carrier."

The Carrier stated the facts as follows:

"Pelican is a small town, population not to exceed 300 people, located on the Pleasant Hill branch, a branch line on which we operate one local passenger train each way daily, with tri-weekly local freight service but with no Sunday local freight service, the Agent at this point being regularly assigned 6 days per week.

"Prior to April 17, 1932, he had Sunday hours from 9:30 A. M. to 11:30 A. M. in order to meet local passenger train No. 25, to copy a train order for that train, to make a meeting point between train No. 25 and local passenger train No. 26 and to sell tickets (see Exhibit 'A' attached), for which he was paid two hours at overtime rates in accordance with Article 6 (b):

'When notified or called to work on Sundays and or the above specified holidays, a less number of hours than constitutes a day's work within the limits of the regular week-day assignment, employees shall be paid a minimum allowance of two (2) hours at overtime rate for two (2) hours' work or less, and at the pro rata hourly rate after the

during the two hours he was on duty Sunday A. M., but when it was felt that it would no longer be necessary to open Pelican station on Sunday morning for the purpose of handling train orders and selling tickets for train No. 25 and the station was closed all day on Sundays, arrangements were made for the Postmaster to get this pouch of mail left by No. 26 Saturday P. M. from the box provided for that purpose and take it to the post office Sunday morning.

"Such an arrangement is not in violation of the Telegraphers' Agreement, certainly not in violation of the Scope Rule, on which we understand the Committee relies in this case. That rule says nothing about the handling of mail coming within the scope of the Telegraphers' Agreement. As a matter of fact, at stations where we have janitors or porters, they handle the mail. At many other points we have contracts with Postmasters or other outside parties to handle mail, and such arrangements have been in effect for many years and antedate the Telegraphers' Agreement.

"This case would not have been brought up except for Award 217, and certainly the facts as shown in that Award are in no manner comparable with those in the case at issue. We do not employ train meeters on Sundays and holidays to handle baggage and sell tickets and to whom the Agent turns the station over as was required by the Railroad in the case covered by Award 217. The station at Pelican is closed on Sundays."

OPINION OF BOARD: In support of this claim the General Committee of the Order of Railroad Telegraphers submits that the agency position at Pelican, Louisiana, is covered by the Telegraphers' Agreement and that the Agent is the only employe at that station who is covered by such agreement.

The General Committee contends that prior to April 17, 1932, the agent at Pelican was assigned a call on Sundays and holidays to meet Train No. 25 to handle the U. S. Mail and perform the necessary duties at the station. Effective April 17, 1932, the Carrier discontinued the assignment of meeting Train No. 25 on Sundays and holidays and the work of handling the U. S. Mail was contracted to an outside party not in the employ of the Carrier. The General Committee contends that the Agent at Pelican continues to handle U. S. Mail on and off Train No. 25 daily except on Sundays and holidays, and that inasmuch as the handling of U. S. Mail remains a part of his duty week days, it is his right to perform such duties on Sundays and holidays and receive compensation therefor in accordance with Article 6 (b), the scope rule of the existing agreement between the parties.

The Carrier contends, first, that as the change in assignment involved was made more than two years prior to the effective date of the Amended Railway Labor Act and as no question of the Carrier's right to make the change was raised prior to the effective date of the Act, this was not a pending and unadjusted case within the purview of the Act on the date of its approval on June 21, 1934, the claim should be dismissed on account of the delay of the petitioner in its presentation.

The Carrier further submits that prior to April 17, 1932, the Agent at Pelican was assigned from 9:30 A. M. to 11:30 A. M. on Sundays and holidays, to meet passenger train No. 25, copy train order for Train 25, sell tickets for and put mail on Train 25 and carry to the post office the mail that was left in a locked box by Train 26 on the previous night.

The Carrier further submits that, effective April 17, 1932, it was no longer necessary to give Train 25 a train order at Pelican, nor was it necessary to sell tickets for that train; and as the exchange of mail by train No. 25 at Pelican was discontinued on Sundays, the station was closed on that day and the agent's Sunday assignment was discontinued. Following the discontinuance of the Sunday assignment and the closing of the station on Sundays an arrangement was made by the Carrier with the postmaster to secure the U. S. Mail from the locked box where it had been left by the crew of Train No. 26 the night before and carry it to the postoffice.

With respect to the Carrier's contention that this claim was not a pending and unadjusted case within the purview of the Amended Railway Labor Act on the date of its approval on June 21, 1934, the Board submits that this claim represents a dispute between two parties to an agreement, growing out of the interpretation or application of an agreement concerning rates of pay, rules or working conditions, in accordance with the specifications of Article 3, Paragraph (i) of the Amended Railway Labor Act and as such the Board rules that this case is properly before this Third Division of the National Railroad Adjustment Board.

Considering the contention of the General Committee that, inasmuch as the Agent at Pelican handled mail on and off Train No. 25 on weekdays and, incident with other duties, carried the mail to the postoffice that had been left in a locked box by the crew of Train No. 26 the night before, it was the Agent's right to perform such duties on Sundays and holidays and receive compensation therefor, the Board submits that according to the evidence introduced in this claim all of the Sunday duties existing prior to April 17, 1932, had been done away with, with the exception of taking the mail that had been left in a box the night before and delivering it to the postoffice. That is, the station was not opened for the handling of Train No. 25, no tickets were sold, no train orders were received or delivered, no mail was handled to or from that train, and no necessity existed for the presence of an Agent except as it might be for carrying to the postoffice such mail as had been left the night before.

Considering these conditions the Board submits that, while the handling of mail from a box at the station to the postoffice may have been a part of the Agent's duties, when performed in connection with or incident to other work done in and about the station on Sundays or holidays, the taking away of all other work and duties from this station as was done by the Carrier on Sundays and holidays leaving only the mail that had been deposited in a receptacle by the crew of Train No. 26 on the night previous and which was subsequently taken therefrom by an officer authorized to handle mail and carried by him to the final point of distribution, could not be considered or interpreted as a violation of the scope or other rules of the agreement between the parties.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 in view of the conditions evidenced in the instant case the Board finds no basis for disturbing the action of the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1937.