Award No. 1083
Docket No. TE-1030

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY—EASTERN LINES

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that the carrier violated the Telegraphers' Agreement at locations named in the Statement of Facts, and others, one-man stations, where it contracted with persons not covered by the Agreement to perform outside of the agent's assigned hours, week-days and or Sundays and holidays, work covered by the Agreement and which is regularly assigned to and performed by those agents during their assigned hours and that such agents, and agents at other stations where similar requirements were in effect and which may have been inadvertently omitted from this Claim, be paid retroactively under the call and overtime provisions of the agreement for time not so assigned."

EMPLOYES' STATEMENT OF FACTS: "On various dates at Appleton, Wyaconda, Hurdland, Ethel, Rutledge, Carbondale, Gorin, Rayville, Scranton, Pomona, Welda, Barclay, Reading, Elgin, Windom, Neosho Rapids, Quenemo, Wakarusa, Collinsville, et al, one-man stations, the Carrier contracted with persons not under the jurisdiction of the Telegraphers' Schedule to meet trains handling mail, baggage and express outside of the assigned hours of the agent, week-days and or Sundays and holidays, which duties are of the same nature as some of the duties regularly assigned to and performed by the agent during his assigned hours. These persons with whom contracts were made are designated by the carrier, as mail, baggage and express handlers and were paid on a monthly basis, ranging generally from $2.50 to $30.00 per month.

"Agreement bearing effective date of February 5, 1924, and August 1, 1937, as to rules of working conditions and rates of pay respectively, exists between parties to this dispute."

CARRIER'S STATEMENT OF FACTS: "Statement below lists (Column 1) stations of the Carrier mentioned by the Employes and at which only one employe classified and compensated under the provisions of the Telegraphers' Schedule was assigned, where the carrier employed others than Telegraphers' Schedule employes to handle baggage and/or mail and/or express; (column 2) the dates on which the use of such others than Telegraphers' Schedule employes was discontinued; (Column 3) the dates on which claim for application of call and overtime provisions of Article III of the Telegraphers' Schedule was filed with the Carrier:

Third Division. The Carrier replied that it would like to be informed of the rule in the Telegraphers' Schedule, or cited to other authority, on which the claim is based, so that it could determine whether or not it would join him in submitting the claim to the Board. More than a year has elapsed and the Carrier has not been informed in line with its request. However, while the claim is dormant it is nevertheless one pending and unadjusted.

"The La Plata claim is illustrative of what can be brought about by the use of injudicious words or the injudicious use of words as used in Award No. 602.

"The Carrier is of the opinion, also, that the referred to language in 'Opinion of Board' in Award 602 is intended to enjoin the Brotherhood of Railway Clerks from requesting, and the Carrier granting if it desired, a rule that would permit employes covered by the Clerks' Agreement to perform any work of a strictly clerical nature at any station **where only one employe covered by the Telegraphers' Schedule is employed,** and as there is no recognized difference between stations where only one employe covered by the Telegraphers' Schedule is employed and stations where more than one such employe is employed, it follows that the Board has by Award 602 nullified the agreement with the Brotherhood of Railway Clerks, and this opinion is shared by The Order of Railroad Telegraphers as witness its position in the case of La Plata above cited.

"If it should be argued that the referred to section of the Scope rule of the Clerks' Agreement is inoperative only where one employe covered by the Telegraphers' Schedule is employed, the Carrier points out that such Scope rule does not carry any such exception and none is provided for in Award 602. If the Scope rule of the Clerks' Agreement is inoperative, it is inoperative under any and all circumstances, there being no middle ground.

"Evidently being satisfied as to what advantage it feels has been accorded it by Award 602, The Order of Railroad Telegraphers was shrewd enough not to jeopardize that presumed advantage by prosecuting before this Board the dispute covered by the Board's Docket No. TE-656 and withdrew same from consideration of the Board (Award No. 673).

"We respectfully request that the Board correct the error of Award 602."

OPINION OF BOARD: In Award 602 of this Division, involving the same carrier, the same organization, the same agreement, the same rules, and the same issue on the merits as are presented in this proceeding, the Board held that the employment by the carrier of persons not subject to the Agreement to perform duties in the handling of mail, baggage, and express at the one-man stations involved, outside the agents' assigned hours, which were regularly assigned to and performed by the agents at these points during their assigned hours, constituted a violation of the Agreement. No adequate grounds appear for disturbing this determination of the Board, and it must be held to be controlling in this proceeding.

Since, however, the arrangements complained of and constituting violations of the Agreement in this proceeding have been discontinued at all of the 19 stations expressly covered by this claim, the proceeding resolves itself into one solely of retroactive compensation, by way of penalty for past violations under the call and overtime rule of the Agreement. Whether or not the claimants are entitled to recovery, as well as the extent of recovery, if any, are governed by Article V (i) of the Agreement of February 5, 1924, providing that "any grievances to be considered must be presented within thirty (30) days of date alleged to have occurred." Under this rule, as established by previous awards of this Division involving the same carrier and reaffirmed in connection with the disposition, by awards con-

temporaneously rendered, of Dockets TE-812, TE-907, TE-935, and TE-936, there is no bar to bringing suit in the case of continuing violations, but recovery is limited to a period beginning thirty days prior to the filing of the complaint. Since, in this proceeding, the service by outsiders complained of was discontinued at each station (except at Elgin, Ethel, Hurdland, Scranton and Windom, at each of which stations adjustment has already been made in conformity with the requirements of Article V (i) as herein interpreted) more than thirty days prior to the filing of the complaint, no basis appears for awarding reparation.

The contention of the employes that June 12, 1936, long before the discontinuance of the service at most of these stations, instead of the actual dates when these claims were filed, should be deemed to be the date of complaint, does not appear to be tenable. While this contention is based upon the fact that the complaint involved in Award 602 was first made June 12, 1936, it fails to recognize that the claim as submitted and adjudicated in Award 602 was confined to three specified stations not involved in this proceeding and embraced no others. This particular carrier, it is conceded by the employes, has often insisted upon the filing of individual claims, and if the situation involved in Award 602 was to constitute a test case of comprehensive incidence in the matter of reparation, as contended by the employes, agreement of the carrier to such a procedure should have been secured. The principle involved in this aspect of the controversy, whereby the claims for reparation thus tardily submitted are barred by Article V (i) of the Agreement, was definitely established, under closely similar circumstances, in Award 863, and no adequate grounds appear for disturbing the determination as there established.

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 employes involved in this dispute are respectively carrier and employes 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 the facts of record disclose a violation of the Agreement, but that the recovery of reparation is barred by Article V (i) of the Agreement.

AWARD

Claim as to violation sustained; claim for reparations denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of May, 1940.