

Award No. 1274

Docket No. TE-1143

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Ernest M. Tipton, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY**

**STATEMENT OF CLAIM:** "Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka and Santa Fe Railway, that when the Carrier, without conference or agreement, removed from employees covered by the current Telegraphers' Agreement at Viola, Rago, Hoehnes, Maxwell, French, Canutillo, La Tuna and Mesquite, the duties of loading and unloading mail, baggage and express between the station building and trains which arrive at said stations outside the assigned hours of the station employe, a part of whose duties it had been to load and unload this mail, baggage and express, and assigned these duties to members of train crews at such times and places, work which these men we represent had contracted to perform and had previously performed was improperly transferred to employees not covered by said Telegraphers' Agreement; that the work here involved be restored to station employees performing it previous to its improper transfer and that the agents at the stations mentioned above are entitled to pay at overtime rate for each occasion on which these employees not covered by the Telegraphers' Agreement have performed the aforementioned work."

**EMPLOYES' STATEMENT OF FACTS:** "An Agreement bearing effective date of December 1, 1938 is in effect between the parties to this dispute.

"At Viola, Rago, Hoehnes, Maxwell, French, Canutillo, LaTuna and Mesquite, outside the agent's assigned hours, train crews are required to unload from their train and place in the station building mail, baggage and or express consigned thereto. Likewise, mail, baggage and/or express due to leave these stations is secured from the station building and placed on the train by train crews. Train crews are provided with facilities for entering the station buildings. Outbound express and/or baggage shipments received at the station outside of the agent's assignment and not billed by him are billed by train crews, express messengers or train baggagemen."

**POSITION OF EMPLOYES:** "The background and/or history. The following letter addressed to agent Rago by Trainmaster Wagner:

Mr. F. C. Fisher,  
Agent, Rago, Kansas

Wellington, Kansas  
August 3, 1938

Dear Sir:

As you will not be on duty effective August 4th and until further advised, arrival train 48 train crew will load Cream and anything else that is at Rago to move on train 48.

train and station. No support for any such proposition is found between the covers of the agreement.

"The practice of using trainmen to load or unload and place in or remove from stations, mail, and/or baggage and/or express at the smaller stations where the volume of such handling is very light and where no station employees are regularly assigned, or during the hours outside of the assignment of the station force, is one of many years' standing. In this connection during the life of the Train Service Board of Adjustment for the Western Region, the Board handled the claim of the Order of Railway Conductors and Brotherhood of Railroad Trainmen versus The Atchison, Topeka and Santa Fe Railway Company, Coast Lines, in the matter of request of trainmen, Los Angeles Division, that they be relieved from handling the U. S. mail at Anaheim. The decision rendered by the Board in its Case 1289, Decision 1169, dated September 9, 1924, is most significant:

'DECISION: In view of the long established practice of trainmen assisting in handling mail at this point, the claim is denied.'

"There is one fundamental which must govern the decision in this case. Unless the carrier has violated an obligation it has assumed in its agreement, this Board has no jurisdiction to sustain the claim. This proposition is too elementary to require argument in support thereof.

"Summarizing, there is no agreement to sustain the employees' claim, and what the carrier did was both in strict accord with the carrier's contractual obligations and required thereby. Furthermore, what has been done was in strict accord with long-established practice, which circumstance fortifies the already plain conclusion that the claim must be denied.

"Under the rules of the Board the carrier has not been permitted to see the position of the employees prior to the time the Board requires this answer to be filed. Under such circumstances the carrier reserves the right to make further reply at or prior to the time of the hearing."

**OPINION OF BOARD:** At Viola, Rago, Hoehnes, Maxwell, French, Canutillo, La Tuna and Mesquite, outside the agent's assigned hours, train crews are required to unload from their train and place in the station building, mail, baggage and/or express consigned thereto. Likewise, mail, baggage and/or express due to leave these stations is secured from the station building and placed on the train by train crews. Train crews are provided with facilities for entering station buildings. Outbound express and/or baggage shipments received at the station outside of the agent's assignment and not billed by him are billed by train crews, express messengers or train baggagemen.

Following the issuance of Award 602, the services of persons designated as mail, baggage and express handlers who for a time had been employed to perform these duties, were dispensed with and the agents were again assigned to perform this service which under Award 602 had been held to be theirs by right under the Telegraphers' Agreement.

Shortly thereafter such duties were again taken from the agents and persons outside the Telegraphers' Agreement (train crews) were again substituted therefor.

This claim involves the same parties, same rules, same agreement, and the same issues that were involved in Docket Number TE-1140, Award Number 1273. For the reason assigned in that award, the Board holds that there was a violation of the prevailing agreement.

The claims were presented to the carrier for stations Viola and Rago on September 12, 1938, while at the other stations named above, the claims were presented to the carrier on April 6, 1939. Therefore, reparation will begin from a period beginning thirty days prior to the time each claim was presented to the carrier. (See Article V (i) of the agreement.)

**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 claim will be sustained in conformity with the Opinion.

#### AWARD

Claim sustained in conformity with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1940.

#### Dissent to Award 1274—Docket TE-1143

This award rests upon the Opinion in Award No. 1273. The error of that award is set forth in dissent appended thereto which dissent is hereby made a part of the dissent to the instant award.

S/ A. H. JONES  
S/ C. C. COOK  
S/ R. H. ALLISON  
S/ C. P. DUGAN  
S/ R. F. RAY