

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

George E. Bushnell, 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 & Santa Fe Railway that the carrier violated the Telegraphers' Agreement at Humboldt, Colony and Lebo, Kansas and at Norborne, Missouri where only two employes covered by said agreement are located, when it contracted with persons not covered by that agreement to perform, during the hours the Telegrapher is not on duty, weekdays, Sundays or holidays, work covered by the Agreement, which is regularly assigned to and performed by one or both of these telegraphers during their assigned hours; and that the telegrapher at stations named herein, or at other stations where analogous conditions exist but which may have been inadvertently omitted from this claim, who by the governing rules of the current telegraphers' agreement is entitled to assignment to perform this contracted work, be paid retroactively for time not so assigned."

EMPLOYES' STATEMENT OF FACTS: "An Agreement bearing effective dates of February 5, 1924, as to rules and January 1, 1923 as to rates, is in effect between the parties to this dispute. A revised agreement effective December 1, 1938, has since been negotiated.

"Prior to April 19, 1928 the station force at Norborne, Missouri consisted of agent-telegrapher, 2nd telegrapher, and 3rd telegrapher, providing 24-hour service. The assigned duties were those normally assigned to and performed by such employes; the handling of mail, baggage and express included therein. Effective April 19, 1928, the 3rd telegrapher position was abolished and concurrent therewith an outside person, not covered by any schedule agreement, was employed to meet trains on the 3rd shift to handle mail, baggage and express (duties previously assigned to and performed by the 3rd telegrapher) at a monthly rate of \$8.00.

"Prior to December 7, 1937 the station force at Colony, Kansas consisted of agent-telegrapher, 2nd telegrapher, and 3rd telegrapher, providing 24-hour service. The assigned duties were those normally assigned to and performed by such employes; the handling of mail, baggage and express included therein. Effective December 7, 1937 the 3rd telegrapher position was abolished and concurrent therewith an outside person, not covered by any schedule agreement, was employed to meet trains on the 3rd shift to handle mail, baggage and express (duties previously assigned to and performed by the 3rd telegrapher) at a monthly rate of \$20.00. Effective February 17, 1938 the monthly rate applying to said contract employe was reduced to \$10.00 per month.

The Carrier for the sake of emphasis wishes to repeat here that the only aspects of this dispute which have been properly handled by the Organization and are therefore properly before this Board for consideration are the disputes involving the situations at Colony and Humbolt, Kansas and these have been allowed by the Organization to lie dormant for almost two years.

"The Carrier wishes to summarize its position in these disputes as follows:

- "1. Only the situations at Colony and Humbolt, Kansas, are properly before this Board for consideration.
- "2. No claim has ever been presented to any officer of this Company as concerns the handling of mail, baggage and/or express at Lebo by other than employees subject to the Telegraphers' Schedule, therefore, no claim is properly before the Carrier or the Board in connection with this station.
- "3. This claim in so far as Norborne, Missouri is concerned was never progressed beyond the Superintendent of the Operating Division of the Carrier on which Norborne, Missouri is located, therefore, such claim is not properly before either the Carrier or the Board for consideration.
- "4. In the opinion of the Carrier, the Board cannot legally under the provision of the Railway Labor Act assume jurisdiction of these disputes in so far as they pertain to conditions at Lebo, Kansas and Norborne, Missouri.
- "5. Article II, Paragraph (a) of the Telegraphers' Schedule, effective (as to rules) as of February 5, 1924, has not, in the opinion of the Carrier, been violated. In fact, it is the position of the Carrier that the application of this rule has no bearing whatever on the instant dispute.
- "6. The claim in Award 602 was sustained on the sole ground that the Scope 'rule' of the Agreement was violated when the work in question was done by others than those employees who 'were the only ones available in the localities involved whose duties embraced the particular kind of work,' and, therefore, Award 602 is of no controlling effect in the present case. At each of the four stations specifically named in this dispute, there is more than 'one-man' employed not including the part-time employee.
7. There is nothing in the Schedule between the parties to this dispute or in any award of this Board which can support the claim made.
- "8. It is the position of the Carrier (a position which the Carrier feels is supported by the Third Division of the National Railroad Adjustment Board, see 'Opinion of Board' in Award 1083, Docket TE-1030) that the Organization is without authority to waive the rules of regular procedure by attempting to cover all stations but naming only four as is evidenced by that part of the Organization's claim which for convenience is repeated here:

'Or at other stations where analogous conditions exist, but may have been inadvertently omitted from this claim.'

OPINION OF BOARD: The claim must be sustained because of a long line of applicable awards of this Division, among which are Nos. 217, 529, 535, 564, 602, 1018, 1061, 1082, 1083, 1084, 1121, 1273, 1274 and 1275. A number of these awards involve the same carrier and facts comparable to those embraced in the instant claim.

Attempt is made to distinguish some of these awards because they involve only one man stations. The underlying principle of the cited awards is nevertheless as applicable to two man stations as it is to one man stations.

It is further argued that the claim is not valid because of the manner in which the disputes for each of the four stations were handled and progressed in view of Article V of the agreement. The answer to this argument may be found in various opinions of the Board, among which are Awards 529, 535 and 1082.

We refrain from quoting from the cited controlling awards. The action of the carrier in each instance was a violation of the agreement of which it had ample notice ever since March 30, 1938, the effective date of Award 602. However, under Award 1082 and those cited therein recovery must be limited to a period beginning thirty days prior to the filing of the complaints. We fix these dates from the record as follows: Colony and Humbolt, December 9, 1937. Norborne, June 17, 1938, and Lebo, March 20, 1939. We expressly decline to pass upon "other stations where analogous conditions exist but which may have been inadvertently omitted from this claim" in the absence of factual information upon which to base decision.

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 the facts of record disclose a violation of the agreement at Humboldt, Colony and Lebo, Kansas, and at Norborne, Missouri.

AWARD

Claim sustained with recovery limited as herein stated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1941.