

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

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

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka & Santa Fe Railway, that when the Carrier, without conference or agreement, removed from employes covered by the current Telegraphers' Agreement at Thayer, Havana, Copan, Dewey, Ramona, Elk City, Longton, Elk Falls, Cambridge, Burden, Richmond and Climax, the duties of loading and unloading mail, baggage, express, etc., 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, express, etc., 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 employes not covered by said Telegraphers' Agreement; that the work here involved be restored to station employes performing it previous to its improper transfer and that the agents at the stations mentioned above be compensated under the Call and Overtime rules of the Telegraphers' Agreement for each occasion on which these employes 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; copies thereof are on file with the National Railroad Adjustment Board.

At the stations or locations listed in the Statement of Claim, outside of the assigned hours of the agents, train crews are required to unload from their train and place in the depot mail, baggage, express, etc. consigned thereto. Likewise, mail, baggage, express, etc. due to leave said stations or locations outside of the agents' assigned hours is secured from the depot and placed in the train by train crews. Train crews are provided with facilities for entering the station buildings. Outbound express and/or baggage shipments received at said stations, outside of the agents' assignments and not billed by them, are billed by train crews, express messengers, or train baggagemen.

POSITION OF EMPLOYES: For the purpose of recording certain history that is pertinent hereto, the Organization goes back to disputes originating during the late twenties and early thirties between the Organization and the Carrier relative the latter's arbitrary method of taking certain agency positions out of the Telegraphers' Agreement and substituting therefor outside persons with a carrier-designation of "resident agents." Said dispute reached your Board in Docket TE-150. Award No. 255 dated May

The most recent expression of this Board with respect to past practice and the conduct of the parties under an agreement is found in Award 1689, wherein it was stated:

"The most important evidence on this point is that the record before us shows that for a period of at least sixteen years at Beaumont without any protest on the part of the employees this work has been performed by those not covered by the Agreement. Protest was first made in April 1940, by J. L. Dyer, General Chairman. This was only five months before the effective date of the present Rules Agreement. We cannot overlook the fact that the Carrier and the Committee, with a full knowledge of all the facts before them and the pending controversy undoubtedly fresh in their minds, failed to mention in their Agreement the position of 'weighmaster' as belonging to the employees covered by the Agreement or that the work of weighing cars was the exclusive province of those covered by its terms. We must hold that the Agreement was entered into with full knowledge of the long established practice at Beaumont."

The foregoing is directly in accord with the facts in the instant dispute. Here as in the case covered by Award 1689, the Organization was fully informed with respect to the practice now complained of; they had filed claims in September, 1938 against that practice as it existed at Viola and Rago (See Docket TE-1143, Award 1274); and with that knowledge of the practice before them during the 1938 negotiations which resulted in the current agreement effective December 1, 1938, raised no objections thereto and made no contention that the handling of mail, baggage and express was the exclusive right of employees covered by the Schedule.

In order to sustain this claim, The Order of Railroad Telegraphers must prove:

- (1) That the practice complained of has not been in existence since before the date of the first Telegraphers' Schedule.
- (2) That it ever protested that practice prior to the filing of protests at Viola and Rago in September, 1938.
- (3) That it ever theretofore contended that the handling of mail, baggage and express by other than telegraph service employees was prohibited by the Telegraphers' Schedule.

CONCLUSION

In conclusion, the Carrier maintains that the instant claim should be dismissed or denied for the reasons herein presented and which are summed up as follows:

- (1) The Schedule rules cited by the Organization do not support the claim.
- (2) The handling complained of is in accord with the long and well established practice on the property.
- (3) The handling has had the tacit approval of the Organization and its representatives.
- (4) The restrictive handling now sought by the Organization has never been the subject of negotiation between the parties.
- (5) The Third Division cannot extend or alter the provisions of the Agreement between the parties.

OPINION OF BOARD: The carrier concedes that denial of this claim would of necessity overrule the decisions of this Division in Awards Nos. 1273, 1274, 1275. Those disputes involved the same Carrier, the same Organization, the same contract and presented essentially the same issue as that presented here: whether during hours in which the station employee is off duty the Carrier may assign to train crews the work of loading and unloading mail, baggage, express, etc. between trains and the station building.

The Carrier urges that those Awards should be overruled because they are based upon an erroneous assumption that Award No. 602 was controlling of the issues presented. The dispute in Award No. 602 was between the same Carrier, the same Organization and involved the same contract. The issue presented was identical with the issue presented in the challenged Awards save in one respect; the work was performed by "contractors" instead of train crews.

In Awards Nos. 1082, 1083 and 1084 construing Award No. 602 under identical situation, it was said:

"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."

Clearly the gist of the violation of the agreement consists in depriving employees subject to the agreement from work falling within its scope.

In face of Awards Nos. 602, 1082, 1083 and 1084, and many others that might be cited, the contention that the work, which is the subject of dispute, does not come within the scope of the agreement is untenable.

We think the Awards mentioned were controlling in the disputes presented in Awards Nos. 1273, 1274 and 1275; and that all the Awards mentioned compel a decision sustaining the claim in the instant case.

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 employees involved in this dispute, are respectively carrier and employees 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 Carrier violated the agreement.

AWARD

Claim sustained subject to the limitations of Article V section (i) of the Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of April, 1943.

Dissent to Award 2155, Docket TE-2012

What has been said in our dissent to Award 1273, Docket TE-1140, applies with equal force to this Award.

/s/ C. P. Dugan

/s/ R. F. Ray

/s/ C. C. Cook

/s/ R. H. Allison

/s/ A. H. Jones