

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Union Pacific Railroad Company, Eastern District,

- (1) That when the Carrier, effective May 12, 1946, without conference, and agreement with the Committee, removed from the agents at the one-man stations covered by the telegraphers' agreement at Miller, Sumner, Eddyville and Oconto, Nebraska, on the Nebraska Division, the duties of loading and unloading mail, baggage and express between the station buildings and trains which arrive at said stations outside the assigned hours of the agents, a part of whose duties had been to load and unload such mail, baggage and express, and assigned these duties to members of train crews at such time and places, work which these agents were contracted to perform and had previously performed, these duties were thereby improperly transferred to employes not under the telegraphers' agreement; and
- (2) That the work here involved shall be restored to the agents performing it previous to its improper transfer, and that the agents at the one-man stations specified above be compensated under the Call rule of the telegraphers' agreement for each day claimed and all subsequent days on which employes not covered by the telegraphers' agreement have performed this work.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date April 1, 1938, revised November 1, 1947, is in effect between the parties to this dispute.

Effective May 12, 1946, at the stations named in the Statement of Claim train crews of trains arriving outside of the assigned hours of the agents are required to handle mail, baggage and express between the station buildings and their trains and load and unload same to and from their trains. These train crews are furnished facilities for entering the station buildings.

The work of loading and unloading mail, baggage and express from and to trains and station buildings is a part of the work of these agents during the time they are on duty on their assigned hours of work. Prior to this work being assigned to train crews of trains arriving at these stations outside of the assigned hours of the agents, these agents were called to perform this work for which service they were paid for a call under the Call Rule of the telegraphers' agreement.

"The General Committee contends that the provisions contained in Rules 1 and 2 (Scope Rule) clearly contemplate that all work of the character covered by these rules of the Agreement shall be performed by employees represented by The Order of Railroad Telegraphers and that the Carrier is in violation of said Agreement in making agreements with individuals of other Organizations, having for their purpose the removal of work which rightfully belongs to the Agent-telegrapher at Bisbee Junction."

The Board denied the claim presented in this case, thus declining to approve the same broad, all-inclusive interpretation of the scope rule that is sought herein.

The Carrier has shown in the foregoing position that the claim submitted is without merit and cannot be sustained and respectfully requests this Board to deny the claim presented.

Exhibits not reproduced.

OPINION OF BOARD: The claim, the pertinent rules of the Agreement, citation and digest of awards, and the contentions of the parties are set forth above.

The Organization relies upon the Scope Rule and cites many awards in support of its position: Awards 553, 602, 1082, 1083, 1084, 1273, 1566, 2418, 2155, 2282, 2931 and 2086. The Carrier points out that the majority of these awards deal with one Carrier, The Atchison, Topeka and Santa Fe Railway Company. There is presented the question in argument by the Carrier of a difference in the Scope Rules of the Union Pacific and the Atchison, Topeka and Santa Fe Railway. The Organization calls attention to the fact that awards cited are not limited to those in which the Atchison, Topeka and Santa Fe Railway was a party, but also include Award 2086 in which the Denver and Rio Grande Western Railroad was the Carrier; Award 2931 in which the Chicago, Rock Island and Pacific was the Carrier; and Award 2282 in which the Western Pacific was the Carrier.

Dissenting opinions are filed in several of the awards cited by the Organization. Suffice to say, however, that the preponderance of findings are in favor of the general proposition which is the basis of this claim, although the majority of these findings relate to those in which the Atchison, Topeka and Santa Fe Railway Company was a party.

The fact situation as presented in this claim would seem to be an important factor. That is, the stations involved are one man stations. Also, another factor which must be given serious consideration is that of established practice and custom in this type of station. It is well recognized that at one man stations, the one in charge, at each station, has for many years been called on to load and unload mail, baggage and express at his station from train to station building or buildings. And this is true when train arrivals come outside of the assigned tour of duty as well as train arrivals coming within the assigned hours.

The Organization cites Rule 928 of the Transportation Department of the Carrier, as follows:

"Freight houses must be locked, and cars containing freight, which can be closed, must be sealed or locked at all times, except when the agent or other authorized person is in immediate charge thereof."

The change in the practice at these stations came about during a coal strike which caused the changing of train schedules and the curtailing of service; Nos. 517 and 520 prior to May 12, 1946 (the date when the change in practice took effect) were Sunday trains only and on that date they were placed on a daily schedule by reason of the emergency and Trains Nos. 518 and 519 were abolished. When No. 517 resumed normal schedule, these agents were not called to meet that train. They were assigned calls on Sundays at approximately 9:00 A. M. to deliver mail to the post office which the

train crew on No. 517 had left in the freight house and to meet No. 520. The only difference or material change effected was assigning agents to one call on Sundays subsequent to June 6, 1946, instead of two calls in effect prior to May 12, 1946.

The Carrier contends that the reducing of two calls to one call is strictly in conformity with Rule 29 in the Agreement.

The record shows that on March 1, 1943, the Carrier entered into a contract with the Brotherhood of Railroad Trainmen for the work in question, providing for a differential of 34¢ per day over passenger brakeman's rate on trips when such service is performed.

In the opinion of the Board, this claim comes within the purview of that type of case which must be decided on the basis of traditional custom and practice for claimants in these one man stations to meet Train Nos. 517 and 520 and to transfer mail and baggage to the station buildings. These trains operate on Sundays only, except in emergencies such as existed from May 12, 1946 to June 6, 1946. The handling of mail and baggage had, by custom and practice, been the work of the employees, members of the Organization. Therefore, the findings will be that for the period of time in question it was the work of the claimants.

This finding is not made under the Scope Rule and is based upon the custom and practice long established at the stations under consideration and relates exclusively to Trains Nos. 517 and 520 which later reverted to normal schedule, i.e., Sunday only.

As this finding is based upon custom and practice, and as there is apparently a conflict as between train crews and employees of the Organization, it is not the purpose to set a precedent of a finding under the Scope Rule, for, as apparently shown by the record of evidence in this case, different customs and practices are in use by the Carrier at various points on its system.

The finding is limited to the facts in this case, that is, by custom and practice, claimants had been doing this work. This is not to be taken away from them.

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 claim is sustained in accordance with the Opinion above and is also limited by the provisions of the Opinion and is based exclusively on custom and practice prevailing at the stations in question.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 9th day of November, 1948.