

Award No. 4625
Docket No. TE-4311

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE NEW YORK CENTRAL RAILROAD
(Buffalo and East)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad Company, Buffalo and East, that

(a) the Carrier violated and continues to violate Rules 1, 20 and 27(a) of the Telegraphers' Agreement when and because it did not, on October 7, 1947, nor since, advertise the newly established ticket agent position at South Schenectady, New York, to employees covered by the said Telegraphers' Agreement;

(b) the Carrier shall be required to now advertise said position in accordance with Rules 20 and 27(a);

(c) each day the position remains unfilled, in accordance with Rule 27(a), the senior idle extra employe shall be allowed one day's pay at the rate prescribed by Rule 20, and

(d) the employee who is finally assigned to the position, following application of Rule 27(a), shall, since 30 days subsequent to October 7, 1947, to the date assigned, be paid the difference between what would have been earned on the position and what was earned on other positions.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties, hereinafter referred to as the **Telegraphers' Agreement**, bearing effective date of January 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Effective October 7, 1947, Carrier established position of ticket agent at South Schenectady, New York. It was filled by appointment to a person outside the Telegraphers' Agreement.

The position is not supervisory as measured by Ex Parte No. 72 as issued by the Interstate Commerce Commission. The Organization requested Carrier to bulletin the position to employees covered by the Telegraphers' Agreement. Request was declined.

POSITION OF EMPLOYEES: On October 7, 1947, a new position was established at South Schenectady, New York, under the title of Ticket Agent. Instead of being advertised as a vacancy to employees covered by the Telegraphers' Agreement as required by the rules, the Carrier chose to take a most arbitrary stand and selected an employee from another class of service not coming under the Telegraphers' Agreement and unilaterally assigned him to the position of ticket agent at South Schenectady.

4. The Telegraphers' Organization has no proper claim to the position.

The Carrier is confident that your Board will recognize the entire lack of propriety in the demand of the Employees in this case and deny the claim.

OPINION OF BOARD: The question before the Board is whether the position at South Schenectady, New York, given the title of Ticket Agent, performed routine work and that the Scope Rule of the Telegraphers' Agreement dated January 1, 1940 covers such work.

There is no dispute that the title given to the position at South Schenectady, New York, was Ticket Agent. However, this Board has held in Award 2138 that the title which is given to a position is not controlling, but of real importance in the type of work which the employee is called on to perform. The Board has also held in Awards Nos. 3003 and 3004 that the Scope Rule does not specify the work that falls within the Agreement, and in Awards Nos. 2138, 1078 and 1418 that the Scope Rule does not refer to work to be performed, but to a particular class of workers. Positions are not automatically bulletined as belonging under the Telegraphers' Agreement because of the title of the position, but only when the work to be performed could bring the position under the Agreement. There are certain Ticket Agent positions covered by the Agreement, but there are also some Ticket Agent positions that are not covered by any Agreement.

In the instant case, when the Army first informed the Carrier that the Graves Registration Division at South Schenectady, New York, was designated as one of the distribution centers for American dead from overseas areas, the Carrier decided that the work would be done through the Albany Ticket Office. In that office the work would have been done by clerks. On further discussion with the Army, it was pointed out that the handling of the war dead and their escorts was work of an exacting nature, that it was essential that work be performed without delay, misunderstanding or complaints. The Army requested the Carrier to place at its disposal in South Schenectady, a man of the greatest experience available. The Carrier, after discussion with the General Chairman of the Brotherhood of Railway and Steamship Clerks, decide to appoint the Chief Clerk of the Albany Office to handle the work at South Schenectady. If the position had been given the title of Ticket Clerk, it would have had to be advertised to employees coming within the Scope Rule of the Clerks' Agreement in that Seniority District. The concurrence of the General Chairman of the Clerk's organization was advisable, so as to establish this position as an excepted position subject to appointment. The title of Ticket Agent was given the position since there are such positions not covered by any Agreement.

The duties of a Ticket Agent at an on-line office coming within the Scope of the Telegraphers' Agreement are to have full responsibility of a ticket office, to make out period reports of a ticket office, to solicit business, serve the public with travel information, quote rates, train schedules, make reservations and sell tickets. The position at South Schenectady, New York, was not a passenger or freight station open to the public, and the duties of the position consisted solely of routing and ticketing escorts and bodies by rail, and the preparation of records and reports incidental thereto. This is work generally performed by a clerk, but by reason of the delicate nature of this work, the Army requested, and the Carrier appointed, the Chief Clerk at Albany, an excepted employee, the man with the most experience available. In effect, the position was a division of the Albany Ticket Office, the Chief Clerk of that office doing his work not in Albany, but at South Schenectady for the convenience of the Army. He did not and could not have charge of a station or ticket office, sell tickets, or give information to the public, or solicit business. We are satisfied that the position in question does not come within the Scope Rule of the Telegraphers' Agreement of January 1, 1940, and that the claim should be denied.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 15th day of November, 1949.