

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Buffalo and East)

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

- (a) The Carrier violated and continues to violate the provisions of the Telegraphers' Agreement when commencing September 1, 1949, without conference or agreement with the Organization, the Carrier unilaterally removed the handling of the United States Mail on and off Train No. 1421 at approximately 3:00 A. M. from the Agent at Tonawanda, discontinued stopping Train No. 1421 at Tonawanda and transferred the handling of this Tonawanda mail to an employe not covered by the Telegraphers' Agreement at the next station, in North Tonawanda, and
- (b) in consequence of this violation, the Carrier shall now pay a "call" payment to the incumbent of the position of Agent at North Tonawanda commencing September 1, 1949 to the date of the correction of the violation, except between October 26, 1949 to April 29, 1950, inclusive, when Train No. 1421 was temporarily discontinued.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of July 1, 1948, amended September 1, 1949, is in evidence, hereinafter referred to as the Telegraphers' Agreement; copies thereof are on file with the National Railroad Adjustment Board.

North Tonawanda, New York is located on the Falls Branch of the Buffalo Division. Two positions covered by the provisions of the Telegraphers' Agreement are on duty at this station consisting of:

Ticket Agent—7:15 A. M. to 3:15 P. M.

Asst. Ticket Agent—3:00 P. M. to 11:00 P. M.

The hours of the Ticket Agent formerly were 6:15 A. M. to 2:15 P. M. These positions work seven days each week.

Prior to September 1, 1949, Mail Train No. 1421 arrived daily at Tonawanda, New York at approximately 3:00 A. M. and at North Tonawanda

station at 4:00 P. M. to assist in handling U. S. Mail on and off trains during the balance of his tour of duty.

It will be noted that U. S. Mail has been handled on and off Train 1421 at North Tonawanda by an employee subject to the Clerks' Agreement since February 1937, or a period of approximately 13 years. Up to the date the instant claim was presented, no complaint, protest or claim was presented by telegraph service employees or their Organization representatives against any alleged violation of the Telegraphers' Agreement. Obviously, there were no grounds for such a claim and it is equally obvious that there are no grounds for the present one.

4. THERE IS NO RULE IN THE TELEGRAPHERS' AGREEMENT THAT SUPPORTS THE CLAIM FOR "CALL" PAYMENT TO THE INCUMBENT OF THE POSITION OF TICKET AGENT AT NORTH TONAWANDA."

The Employees have charged the Carrier with violation of the "provisions" of the Telegraphers' Agreement but neither in the handling of the claim on the property nor in their Statement of Claim have they cited any rules of the Agreement which they consider have been violated.

Briefly stated, the facts are that effective September 1, 1949, stop at Tonawanda was discontinued for Train 1421 as well as other trains, and Tonawanda U. S. Mail was thereafter handled on and off those trains at North Tonawanda. The work of handling U. S. Mail on and off Train 1421 at North Tonawanda has, for many years, been performed by employees coming within the scope of the Clerks' Agreement. Because Tonawanda U. S. Mail was included in North Tonawanda U. S. Mail handled by Clerks' Agreement employees on and off Train 1421, Organization representatives contend Carrier violated the provisions of the Telegraphers' Agreement due to not using a telegraph service employee, namely, the Ticket Agent at North Tonawanda, to perform this work, and in consequence of this alleged violation claim is made for "call" payment in favor of this Ticket Agent. That claim is made in total disregard of the fact that during the past 13 years telegraph service employees have not handled U. S. Mail on and off Train 1421 at North Tonawanda, such work having been performed by Clerks' Agreement employees.

Inasmuch as the Employees have not cited any specific rule or rules of the Agreement as having allegedly been violated, Carrier, of course, is not at this time in position to comment on any such alleged rules violations.

It is the position of the Carrier, however, that under the factual circumstances as above briefly outlined there has been no violation of any of the rules of the Telegraphers' Agreement.

CONCLUSION

The evidence herein presented conclusively shows that Carrier did not violate the provisions of the Telegraphers' Agreement as alleged by the Employees and the claim should, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 1, 1949, Train No. 1421 made a scheduled stop at Tonawanda, New York, at approximately 3:00 A. M., and the ticket agent, an employee under the Telegraphers' Agreement, assigned hours 5:00 A. M. to 1:00 P. M., was called out in advance of his regular starting time to meet Train No. 1421 to handle Tonawanda mail on and off the train. After September 1, 1949, the stop of Train No. 1421 at Tonawanda was discontinued and thereafter Tonawanda mail was handled at North Tonawanda by an employee under the Clerks' Agreement, who met the train at that station. At North Tonawanda there are two positions covered by the Telegraphers' Agreement and at least one under the Clerical Agreement. There the work of meeting Train No. 1421 and handling mail was

performed by the Clerical employe during the hours of his assigned shift and the same work in connection with trains stopping during the hours of their shifts was and is done by the Telegraph employes. Employes file claim as indicated above.

The Carrier has the right to arrange the station stops of its trains, subject to applicable State or Federal regulations and that right is not restricted by the terms of the collective bargaining agreement. Accordingly, the discontinuance of the stop of Train No. 1421 at Tonawanda is in no way violative of the Agreement. When Train No. 1421 no longer stopped at Tonawanda the work of meeting and handling mail in connection with that train at that place no longer existed. Consequently, in order to prevail in this claim, it is incumbent upon the Employes to establish that the manner of assigning the work of meeting Train No. 1421 and handling mail in connection therewith at North Tonawanda is in violation of the Agreement. Clearly at other than one man stations, the meeting of trains and handling of mail in connection therewith is not exclusively Telegraphers' work. Here, it is admitted by the Employes that the Clerical employe has performed this type of work at North Tonawanda for at least the last thirteen years without protest. It is apparent that for those thirteen years the Employes recognized, as we do, that the assignment of the work was in accordance with the Agreement. The fact that mail destined for Tonawanda or from Tonawanda after the discontinuance of the Tonawanda stop was added to other mail handled at North Tonawanda in no way affects the propriety of this assignment of the work.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tammon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of March, 1951.