

Award No. 5949
Docket No. TE-5650

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY
(EASTERN DISTRICT)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (Eastern District) that:

(1) The Carrier violated and continues to violate the terms of the prevailing agreement between the parties when and because, without conference or agreement, it removed from the scope of said agreement, and from the employees covered thereby, the work of loading and unloading mail, baggage, express and freight and the handling of same between station buildings and trains arriving and departing outside the assigned hours of the employees; discontinued the payment of "calls" to such employees for said work, and assigned such work to employees holding no seniority or contractual rights under the agreement, at the following one-man stations:

Kersey	Colorado
Weldona	"
Snyder	"
Merino	"
Atwood	"
Iliff	"
Strasburg	"
Byers	"
Agate	"
Kit Carson	"
Weskan	Kansas
Buffalo Park	"
Crook	Colorado
Sedgwick	"

(2) The work here involved shall forthwith be restored to the scope of the agreement and to the employees thereunder and

(3) The employees under the agreement at the above mentioned stations—and any others where like conditions prevail—shall be

compensated in accordance with the overtime and/or call provisions of the agreement for each occasion where employes not under the agreement have been, or are, required to perform the aforementioned work.

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

On March 18, 1948, following a conference between representatives of the employes and the Carrier, two letters were addressed by the Carrier to the agents at various stations named in the Statement of Claim by which a "call" was assigned to those employes for the purpose of performing the "head end" work, namely: the loading and unloading of mail, baggage, express, etc., in connection with trains arriving and departing such stations outside the regular assigned hours of the employes assigned thereto—Employes' Exhibits A and B.

On March 21, 1947, the Carrier issued Colorado Division Circular No. 75, addressed to ALL TRAINMEN, by which notice was given to such trainmen that effective March 24, 1947, the agents at certain stations would discontinue meeting train No. 54, and that thereafter the "head end" work was to be performed by the crew of such trains. A copy of this Circular, identified as Employes' Exhibit C, is attached hereto.

On various dates thereafter, by individual or joint notices to the agents involved, the "head end" work on trains arriving and departing their stations outside the assigned hours of such agents was delegated to the train crews of such trains. See "Position of Employes" for details of such notices.

Continuously, since issuance of the above mentioned notices, the train crews assigned to trains arriving and departing the one-man stations named in the Statement of Claim, and others, have been required by the Carrier to unload from such trains and place in the depots, mail, baggage, express and/or freight consigned thereto; likewise, the train crews are required by the Carrier to remove from such depots all mail, baggage, express and/or freight due to leave such stations and load it in the trains, the train crews being provided by the Carrier with means for entering such depots or station buildings.

On February 11, 1947, claim was filed by the Organization for discontinuance of the improper delegation of work covered by the agreement to employes not covered thereby, and for proper compensation in favor of the affected employes. This claim has been progressed in the usual manner up to and including the highest officer designated by the Carrier to handle such cases, but has been declined—hence this appeal to your Board.

POSITION OF EMPLOYES: It is the position of the employes that the work of loading and unloading mail, baggage, express and/or freight between station buildings and trains, generally referred to in railroad parlance as "head-end" work at one-man stations belongs to employes covered by the Agreement here in evidence regardless of whether such work is required to be performed within or outside of the regular assigned hours of such employes. This position is fully supported by rules of the prevailing agreement, by previous handling of similar cases on this property, and by numerous awards and decisions of your Board and other tribunals of competent authority, all of which will be discussed hereinbelow.

Among the rules of the agreement most pertinent to the present claim are the following:

"Rule 1. Scope. This agreement will govern the wages and working conditions of agents, agent-telegraphers, agent-telephoners, telegraphers, telephoners, telegrapher-clerks, telephoner-clerks, telegrapher-car distributors, ticket-clerk-telegraphers, telegrapher-switch-tenders, C.T.C. telegraphers, train and tower directors, towermen,

(a) the handling of mail, baggage and express by agent-telegraphers between the train and station, arriving outside their assigned hours, does not belong exclusively to that group by rule, custom or practice.

(b) the handling of such head end business at the stations mentioned in this claim has always been performed by train crews when trains arrive outside the assigned hours of the station force, except during the period indicated in the Statement of Facts, and

(c) by custom and practice the work of handling head-end business is properly performable by train crews.

All data and material contained herein have been presented to the Organization.

(Exhibits not reproduced).

OPINION OF BOARD: This docket is concerned with a claim of the General Committee of The Order of Railroad Telegraphers on behalf of certain members of the Organization employed at certain named stations, and at any others where like conditions prevail, in the Carrier's Eastern District. Petitioner contends that the Carrier removed from the scope of the effective agreement the work of loading and unloading mail, baggage, express and freight and the "handling of same between station buildings and trains arriving and departing outside the assigned hours of the employees." Petitioner asks that such work be restored to the scope of the agreement and that the aggrieved employees be appropriately compensated.

The Organization contends that its claim is supported by the requirements of the Scope Rule, by past practice, and by a special agreement dated on or about March 18, 1943, wherein the Carrier agreed to the assignment of certain calls to agent-telegraphers at the stations herein involved. The Petitioner argues also that the claim is supported by prior awards of the Third Division, in particular Award 4160 involving these same parties.

The Carrier asserts that it has been the practice on this property going back many years for employees other than the agent-telegraphers to handle "head-end" work, whole or in part, depending upon circumstances in effect at the time and station. Carrier denies emphatically that this work has ever been recognized as belonging exclusively to the agent-telegraphers on the basis of the Scope Rule.

The Carrier protests the time delay of the Organization in bringing this claim to the Board. It is argued that the dilatory handling of the claim by the Organization should dictate a denial of the claim.

In addition, the Carrier contends that Award 4160 involving the same parties as the instant case, should be controlling and would dictate a denial award in this case.

The respective parties have submitted voluminous briefs concerning this claim, and they have appeared before the Division, with the Referee sitting as a member thereof, for oral argument. After a careful review of the evidence and argument submitted, it is clear that this claim can be disposed of on two grounds.

At no point in the record does the Petitioner give any acceptable explanation for the long delay in bringing this matter to the Board. The Board has recognized (Awards 4941, 5589, and others) that there must be some limitation upon the period of time claims will be allowed to lie dormant after denial by the Carrier and before appeal to this Board. The party against whom a claim is made cannot be held in perpetual jeopardy as a result of

unjustified delay on the part of the other party. In the instant case the Carrier denied the claim on March 5, 1947, and the case was not appealed to this Board until April 27, 1951, or over four years later. The most favorable date from the Petitioner's point of view would be November 9, 1948, when Award 4160 was made by this Board, immediately after which the Petitioner could have been expected to progress this claim if such action was intended. Certainly this extended delay would deny any rights to retroactive payments prior to filing with this Board.

The record shows clearly that agent-telegraphers have never had the exclusive right to the work at issue at these stations. As in Award 4160, we must here rely upon custom and practice as a guide rather than a dictate stemming from the Scope Rule. Even the Agreement of 1943 above cited does not recognize or concede that all "head-end" work belongs to the agent-telegraphers at these stations on the basis of the Scope Rule.

Applying the test recognized by the Board in Award 4160, and in view of the long delay in handling, a denial award on the claims involved in the instant docket is dictated.

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 over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 7th day of October, 1952.