

Award No. 6409

Docket No. TE-6291

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad that:

(1) The performance of agency work at Concordville, Pennsylvania, March 4, 1950, by an employe outside the coverage of the Telegraphers' Agreement was a violation of the Agreement between the parties and

(2) The Agent at Concordville, Pennsylvania, shall now be allowed one call March 4, 1950, account being denied the right to work on that day.

EMPLOYES' STATEMENT OF FACTS: Effective September 1, 1949, Concordville, Pa., agency station was reduced from a six (6) day per week agency Monday through Saturday, to a five (5) day per week agency Monday through Friday, and the agency station was closed on Saturday all day, and the work abolished.

On Saturday, March 4, 1950, when Agency Station at Concordville, was closed, a representative of the Concord Foods, Inc., called the Yard Master Office at Edge Moor, Delaware, and ordered that cars be placed, which was ordinarily ordered through the Agent at Concordville. The Agent was not called to perform any of the service in ordering cars nor to the supervising of the placing of the cars.

POSITION OF EMPLOYES: There is an Agreement in effect between the parties, Regulations effective September 1, 1949, Rates of Pay effective February 1, 1951.

SCOPE

"The provisions set forth in this Agreement shall constitute separate Agreements between The Pennsylvania Railroad Company and its employes, the Baltimore and Eastern Railroad Company, and its employes, of the classifications set forth below represented by The

The Carrier submits that the course of action which was followed by the Yard Master's organization at Edge Moor in the instant case was the most efficient and economical procedure which could have been taken to comply with the request of Concord Foods, Inc., and clearly was devoid of rule violation or infringement upon the rights of the Agent at Concordville.

The Carrier contends that since it has been shown that the duty of furnishing cars to shippers does not accrue exclusively to Station Agents and Assistant Agents; that the Scope of the Agents and Telegraph Department Employees' Schedule Agreement was not violated; that the Yard Master's organization complied with the request of Concord Foods, Inc., in a manner best suited to the interests of efficiency and economy, and was clearly devoid of rule violation or infringement upon the rights of the Agent at Concordville, it follows that the claim of the Agent for payment of a call under Regulations 4-F-1 (e) and 4-J-1, which in this case was contingent upon a violation of the Scope, is without merit and should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules of working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has established that no violation of the Agreement occurred by reason of the Yard Master's organization at Edge Moor, Del., making arrangements to furnish two refrigerator cars to Concord Foods, Inc., at the request of that Company on Saturday, March 4, 1950, and that the Claimant is not entitled to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board dismiss the claim of the Employees in this matter.

All data contained herein have been presented to the employe involved or to his duly authorized representative.

(Exhibits not reproduced)

OPINION OF BOARD: The claim alleges "the performance of agency work at Concordville, Pennsylvania, March 4, 1950, by an employe outside the coverage of the Telegraphers' Agreement". However, the station was closed and no work was performed there that day.

Actually the claim involves the receipt at another office of the Carrier of a telephone request for cars by a shipper. On the evidence presented, we are unable to say that receiving orders for cars from shippers in the area

is an exclusive function of the station agent. No agreement or rule makes it so and the evidence as to practice is to the contrary. Hence the claim is without merit.

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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of November, 1953.