

Award No. 6414
Docket No. TE-6160

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**MAINE CENTRAL RAILROAD COMPANY
PORTLAND TERMINAL COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Maine Central Railroad Company that:

- (1) The Carrier violated the provisions of the agreement between the parties when it removed the handling of coin lockers at Augusta, Maine, from an employe coming within the scope of of the agreement, thereby causing a monetary loss to that employe:
- (2) the handling of this coin locker business shall be restored to the employe under the agreement and
- (3) the employe or employes who suffered a monetary loss because of the action of the Carrier here complained against, shall be made whole by reimbursement for the loss sustained.

EMPLOYEES' STATEMENT OF FACTS: For the past thirteen years the occupant of the first trick telegrapher position at Augusta, Maine has been required by the Carrier to handle coin lockers without compensation.

By the terms of an agreement effective January 1, 1951, this employe was due a monetary consideration of 5 per cent for performing this work he had been performing for thirteen years gratis.

For the month of January 1951, the first month the agreement provided for the payment of a monetary consideration for the performance of this work the employe received a commission of nine dollars.

February 27, 1951, the Carrier issued instructions requiring the January 1951 commission of nine dollars to be refunded and the employe cease and desist from any further retention of compensation. The work was transferred to employes outside the scope of the Telegraphers' Agreement.

POSITION OF EMPLOYEES: The Rules or Articles of the Agreement here involved are:

ARTICLE 1

Scope

"This Agreement will govern the employment and compensation of General Agents (Minor) and Ticket Agents as shown in the

OPINION OF BOARD: Claim before us is made by the Organization to require Carrier to restore to the Telegraphers' Organization the work of handling coin lockers, including payment of commissions for such handling at Augusta, Maine. In addition, claim is made for reimbursement to the employee or employees suffering a monetary loss.

The record is undisputed that for a period of some thirteen years prior to January 1, 1951 the first trick telegrapher at Augusta, as a part of his assigned duties, made all collections and reports on the operation of coin lockers at this station, and was not paid any additional compensation for such service by the Carrier. Effective January 1, 1951, Carrier and the Organization entered into a new Agreement superseding the prior Agreement of February 18, 1943.

Under the earlier Agreement the Carrier had required the first trick operator to handle the collection of monies and make reports covering the operation of coin lockers at the station. This work was not covered by the Scope Rules in either of the Agreements above referred to. The Organization contends that the fact the first trick telegrapher had been assigned these duties for thirteen years, that by custom and practice the work covering the handling of coin lockers belongs to this position.

At the time of the effective date of the new Agreement, January 1, 1951, Carrier assigned the handling of coin locker work, including the making of collections and reports, to an employee of another craft. But Article 33 of the Agreement makes provision for the payment of five per cent (5%) as a commission to such employees for handling such coin box collections. It is for this action of Carrier that claim is filed, and it is alleged that Carrier violated Article 33 of the Agreement by taking the work from the Telegraphers.

We must adhere to the current Agreement and determine whether or not, as the Organization contends, the work involved properly belonged to the Telegraphers through custom and practice for thirteen years prior to the effective Agreement. During this long period the first trick telegrapher did perform this work without any extra compensation. Under the new Agreement, Article 33 provides as follows:

"ARTICLE 33:

"Coin Lockers — Toilet Locks.

"A commission of five per cent (5%) on all collections made from coin lockers and toilet locks will be paid to employees who handle and account for collections."

Certainly there is no ambiguity in the Article. It provides that employees under this Agreement who handle the locker and toilet lock collections will be paid an additional five per cent (5%) of such collections as a commission. We must bear in mind that on the effective day of the new Agreement, Carrier delegated the work of handling coin lockers and toilet locks to an employee of another craft, the Clerks' Organization.

We can come to but one conclusion, that at the time the new Agreement was negotiated and written, Carrier was in no way obligated to continue this work with the Telegraphers, and certainly by the inclusion of Article 33, Carrier had a right to determine who or what craft could perform the work. If the telegrapher performed it, he would be paid five per cent (5%) commission, in addition to his regular rate of pay as telegrapher. But in this case the work was given to another, and the telegrapher has not performed the work since the current Agreement became effective. The work was taken from the telegraphers on the same day the Agreement became effective. The telegrapher position pays him the regular rate of compensation for his assigned position. He has suffered no monetary loss, as the result of

the work of handling the coin locker collections being removed from his assignment.

It is the opinion of the Board that when the new Agreement of January 1, 1951, was negotiated and became effective, the telegraphers have had no claim to the work, and Carrier has the prerogative to assign such work to employees of its choice. The custom and practice of having the telegrapher perform the work was abrogated by the new Agreement, and Carrier removed the work from the telegraphers at the time the Agreement became effective. Since no work has been performed, no commissions can be due under the Agreement.

Carrier has not violated the Agreement as alleged, and the claim should be denied.

Many Awards of this Division have been cited us by the parties to support their views, but we are of the opinion that Article 33 of the Agreement is so clear in its meaning and intention of the parties at the time it was negotiated, that it leaves no room for misunderstanding that the parties meant that if the telegraphers performed the work claimed, they would be paid five per cent (5%) commission, and that if they did not perform the work, they would not be entitled to commission in addition to their regular assigned rate of pay.

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 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

Carrier did not violate Article 33 of the Agreement as alleged.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 20th day of November, 1953.