

Award No. 6513

Docket No. CLX-6416

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that

(a) The agreement governing hours of service and working conditions between the Railway Express Agency, Inc. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 1, 1940, was violated at Green River, Wyoming December 6 to 23, 1948 inclusive, when Carrier permitted individuals not covered by the agreement to perform work of handling mail, baggage and express, which should have been assigned to and performed by George A. Burke, George W. Fletcher, Tracy W. Stine, Pete Thalass, M. Karician, James E. Scott, D. W. Simpson and Samuel Karician; and

(b) These employees shall now be compensated for monetary losses sustained as a result of not being called and permitted to perform the work in question.

EMPLOYEES' STATEMENT OF FACTS: Green River, Wyoming is a station on the Union Pacific Railroad where the baggage and mail work is handled jointly with express work and all of this work is assigned by bulletin and performed by employees of Railway Express Agency, Incorporated, under the direct supervision of the latter's Agent.

George A. Burke, with a seniority date of November 7, 1948, is the regular occupant of position titled Express Handler, Group 4, Position 3, hours of assignment 10:30 P.M. to 5:50 A.M., day of rest Tuesday, salary \$245.08 basic per month.

A description of the duties of this position (Burke's) as set out in the Bulletin are:

Transfer Mail, Baggage and Express from, to and in trains.
Assist in operating and maintaining motor truck and platform tractor.
Bill express, revise express waybills, check baggage pickup and delivery express, maintain 4 wheel trucks. Answer telephone, wait on

work was removed from the employes of the Reading Company without prior negotiation, had the following to say on that point:

"This work before August 6, 1950, unquestionable was work which belonged to the Organization under the Scope Rule of the Agreement. Had the Reading itself removed it and assigned it to others that would have been a violation. This, however, was not done. In point of fact it allowed or caused it to flow back to the Baltimore & Ohio. Whether it allowed or caused it to flow back is of no controlling significance. It was work which properly belonged to the Baltimore & Ohio, and in the first instance and at no time thereafter could the Reading have performed it without consent of the Baltimore & Ohio.

"The Organization has the right to perform all of the work properly belonging to the Carrier which is covered by the Scope Rule. It also has the right to perform all work embraced by the Scope Rule done by the Carrier by agreement or arrangement with another carrier so long as the agreement or arrangement continues. It may not claim any right to the performance of work which was done because of agreement or arrangement with other carriers after discontinuance of the agreement or arrangement, no matter what was the motive or reason for the discontinuance."

There can be no question that the work performed by the Express Company at Green River, Wyoming, for the account of the Union Pacific Railroad was work arising through contract with a third party, and when the Union Pacific Railroad, in December 1948, elected to perform a portion of such work by its own employes, no rights could arise in favor of the Express employes because the Agreement between the Agency and that group could only extend to the work which the Agency had to offer, namely, the express work and such of the Railroad work as was contracted out to it and not performed by the Railroad Company, upon whom the primary obligation for its performance rested.

Employes have failed to establish violation by the Carrier of the Agreement effective October 1, 1940, at Green River, Wyoming, during the period December 6 to 23, 1948, by not calling employes Burke, et al, on their days of rest for work performed by employes of the Railroad Company in the handling of baggage and mail at that station. A denial of the claim is in order under the facts, the rules and precedent awards cited.

All evidence and data set forth have been considered by the parties in correspondence and conference.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioners cite in support of their position in this claim Rule 1—Employes Affected; Rule 3—Employes Status-Seniority; Rule 5—Seniority; Rule 6—Seniority Rights; Rule 55—Notified or Called rule and numerous Awards of this Division of the Board.

The dispute involves the performance, by those outside of the scope of the applicable Agreement, of the work of handling mail, baggage and express at Green River, Wyoming, during the period from December 6 to 23, 1948 inclusive.

A point of contention being raised by Carrier is as to whether or not employes involved handled express during the period of time designated in the claim on the theory that employes were instructed not to handle the same but to confine the work to that of handling mail and baggage. See letter dated March 15, 1949, declining the claim, Employes' Exhibit "K". However, Petitioners contend that the handling of mail, baggage or express at this location by outsiders is within the rules of the Agreement.

Under an arrangement between the Union Pacific Railroad and the Express Agency established in 1915, the Railway Express Agency performs the handling of mail and baggage as agent for the Railroad Company, the latter reimbursing the Railway Express Agency for a proportion of the wages of the employe engaged in that service. At the time in question all express positions at Green River were seven day assignments, incumbents being relieved on their rest days by employes holding regular relief assignments.

It is also contended by Petitioners that the work of handling mail, baggage and express at this location was work traditionally performed by the employes embraced within the scope rule and was reserved for them, based on their established seniority rights, citing Rule 6 as follows:

“Seniority Rights—Seniority rights of employes to perform work covered by this Agreement shall be governed by these rules.”

and citing also Award 5526 which deals with work which is traditional and customary work assigned exclusively to positions as constituting work falling within the scope of the Agreement and holding that when such work is performed by persons not covered thereby a violation of the Agreement results.

In the opinion of this Division a different question would arise if work was permanently removed under a situation as here presented as between the Railroad Company and the Express Agency and as contended by Carrier under certain conditions this might be possible without violation to this Agreement, that is, Carrier contends here that the removal of such work is justification for the action taken by it in this matter. However, as shown by this record the removal of the work in question was of temporary duration and the work has continued since that time as contended by Petitioners as showing by tradition and custom the parties have treated the same as being work within the meaning of the rules cited.

There is discussion in the record and also presented on behalf of the respective parties in argument as to the meaning of Rule 19 of the Agreement relative to notice on the theory that if work were considered to be discontinued on a permanent basis such notice is necessary. The record clearly shows that the work in question cannot be considered as being discontinued and is so construed. Under this record and rules cited Claimants were entitled to the work in question.

And see Award 6011 and other Awards cited therein on the proposition of existing practices being considered as an interpretation of the intention of the parties if continued through numerous negotiations of the terms of the existing Agreement without abrogation or change of the provisions thereof.

The showing made by Petitioners warrants a sustaining Award on this record.

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 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 the Carrier violated the Agreement as contended.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 11th day of March, 1954.