

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Eastern Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway System, that:

(1) The carrier violated and continues to violate the agreement between the parties when, effective July 1, 1950, it removed from the scope of said agreement and from the employes covered thereby at Saffordville, Elmdale, Clements, Cedar Point, Peabody and Walton, Kansas, the duties of loading, unloading and handling mail, baggage and express to and from trains between the station warehouses and/or mail boxes and trains arriving and departing at said stations, outside the assigned hours of the agents at these one-man stations, a part of whose duties it is and has been to perform this work; and

(2) The Carrier improperly transferred to the members of the train crews and/or other employes on certain trains not subject to said agreement the aforesaid duties; and

(3) These duties and the work here involved shall be restored to said agreement and to the employes under the agreement; and

(4) The agents at these one-man stations named herein, shall be compensated under the call and/or overtime rules, for each occasion on which employes not covered by said agreement have performed the aforesaid duties and work at these stations since July 1, 1950, and thereafter until the violation ceases.

EMPLOYEES' STATEMENT OF FACTS: Agreements between the parties to this dispute bearing effective dates of December 1, 1938 and June 1, 1951 are in evidence.

On about January 1, 1939 the Carrier established bus-truck service between Emporia, and Newton, Kansas, a distance of 78 miles with scheduled stops at the railroad stations between these two points for the purpose of handling mail, baggage and express shipments to and from said railroad stations at Emporia, Saffordville, Strong City, Elmdale, Clements, Cedar Point, Florence, Peabody, Walton and Newton, in lieu of prior handling by trains. This bus-truck operated under a scheduled arriving and leaving time at each station when there was an agent on duty at each of the one-man stations.

during which the work was performed by clerical employees, i.e., employees subject to the Clerks' Agreement. This statement was an admission by Mr. Anderson that telegraph service employees had no monopoly of the handling of mail, baggage and express, and that if an employee subject to the Clerks' Agreement performed the work, no exception to that procedure would be in order from the Telegraphers' Organization.

Under the circumstances, Award No. 1566 cannot be said to lend any support to the Employees' claims in the instant dispute.

Awards Nos. 2155, 2418, 2419 and 2420 involved disputes arising out of the handling of mail, baggage and express by trainmen between depots and trains at times when no station employee was on duty. Those awards likewise lend no support to the Employees' claim in the instant dispute for the reason that the complained-of handling of mail, baggage and express at the stations named in the Employees' claim is not being performed by trainmen, but, instead, is being performed by an employee covered by the Clerks' Agreement in effect with the Brotherhood of Railway Clerks, and who is available and on duty to perform the work in question at each of the stations named in the Employees' claim. Moreover, the assignment of the handling of mail, baggage and express to an employee covered by the Clerks' Agreement is in accord with the principle enunciated by the Third Division in Awards 3931 and 5318 previously referred to herein.

The Organization has cited no rule of the agreement or otherwise which can legitimately be considered as having been violated. The claim is therefore without merit and should be denied in its entirety.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: It appearing that there are other parties involved in this dispute than the ones represented, within the meaning of Section 3 First (j) of the Railway Labor Act, to whom no notice was given, and the Carrier having properly raised the point as a matter of procedure, this claim must be dismissed without prejudice in line with Award 6680, this day announced.

FINDINGS: The Third Division of the Adjustment Board 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

That the claim should be dismissed without prejudice.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 18th day of June, 1954.

**SPECIAL CONCURRING OPINION IN AWARD NO. 6682,
DOCKET NO. TE-6465**

This is one of a line of four consecutive Awards entered by the Third Division on the same date. The full Opinion is found in Award No. 6680.

The referee makes reference in the full Opinion to what he calls the "Illinois Central case" and the "Allain case". These are respectively reported in 212 F. 2d 22 and 212 F. 2d 32. He points up the Court's language in the former case wherein it said, "At any rate, the Board has the choice of two alternatives, (1) proceed no further or (2) comply with the statutory requirement and proceed to a hearing on the merits, with an opportunity for all parties to be heard." And in all four of these Awards he has dismissed the claim. Therefore, we think that our Awards in this series are compatible with the first alternative expressed in the Opinion of the United States Circuit Court of Appeals.

This Board (Division) is a bipartisan creature of statute and is composed of five Carrier Members and five Labor Members. It employs, pursuant to the Railway Labor Act, an Executive Secretary. While its duty to give due notice is clearly expressed in the statute, the subject has proven to be of a most litigious character. The Executive Secretary has followed the practice of not giving due notice in those instances where it has been ordered by a referee Award unless the Labor Members' Chairman joins in giving him such direction. That direction has been withheld by the Labor Members of this Board irrespective of the many Court Cases holding the giving of notice to be our non-discretionary duty.

We can only look to the law and its interpretation by the Courts for our guide in the administration of our duty. Where that function is checked in the face of such a clear expression of our duty as lies before us in many cases, we are impelled to explain our position and concur in this referee's action, which we think is to "proceed no further". Similarly, when an Award has the effect of ordering due notice, and the actual giving of it is withheld, we are again of the opinion that we are still "proceeding no further". Surely, there can be no accumulation of liability under any claim beyond the point where this Board has failed to comply with what has been so effectively enunciated as its statutory duty.

/s/ E. T. Horsley

/s/ R. M. Butler

/s/ W. H. Castle

/s/ C. P. Dugan

/s/ J. E. Kemp