

Award No. 6824

Docket No. TE-6366

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Denver and Rio Grande Western Railroad:

(1) That Carrier on January 1, 1951, and each day thereafter has violated the terms of the Telegraphers' Agreement, by failing and refusing to permit regularly assigned Agent-Telegraphers at Fraser, Tabernash, Granby, Sulphur, Yampa, Mt. Harris and Hayden, Colorado, to perform their regular duties, as agents in the handling of mail, baggage and express on trains arriving at their stations, after their regular tour of duty, and;

(2) That Carrier in violation of the Telegraphers' Agreement has assigned such work to employes not covered by said Agreement, and;

(3) That Carrier be required to pay Agent-Telegraphers M. L. Fesler; C. C. Fox; G. L. Thorpe; V. R. Wells; J. F. Good; C. F. Youberg, and M. H. Dufford, regularly assigned Agent-Telegraphers at the respective stations, or their successors in said positions, two calls daily, from January 1, 1951 until said violations are discontinued by Carrier.

EMPLOYEES' STATEMENT OF FACTS: Fraser, Tabernash, Granby, Sulphur are stations on Carrier's line of railway between Denver and Orestod, Colorado. Yampa, Mt. Morris and Hayden are stations on Carrier's line of railway between Orestod and Craig, Colorado.

Prior to January 1, 1951, Carrier operated passenger trains from Denver to Craig on the following schedules:

	No. 1 (Read Down)	No. 2 (Read Up)
Fraser	11:24 A. M.	12:24 P. M.
Tabernash	11:32 A. M.	12:16 P. M.
Granby	11:55 A. M.	11:55 A. M.
Sulphur	12:07 P. M.	11:35 A. M.
Yampa	2:54 P. M.	8:50 A. M.
Mt. Harris	4:42 P. M.	7:12 A. M.
Hayden	4:55 P. M.	7:00 A. M.

trains since early in February 1940. The helper messenger on No. 20 which leaves Grand Junction at 8:20 P. M. and arrives Glenwood at 11:33 P. M. handles the mail, baggage and express from train to the station at Clifton, DeBeque, Grand Valley, Silt and New Castle. He also handles the mail, baggage and express on Train No. 19 from Glenwood to Grand Junction at the above mentioned stations. Train No. 19 leaves Glenwood at 3:05 A. M. and arrives Grand Junction at 6:40 A. M. No claim has ever been presented from the agent-telegrapher at Clifton, DeBeque, Grand Valley, Silt and New Castle account they not having been called to perform this work. In addition for many years prior to the year 1948 when Trains 11 and 12 between Salt Lake City, Utah and Marysvale, Utah, were discontinued a helper messenger was used to handle mail, baggage and express from the train to the station on the Marysvale Branch on Train No. 11 which left Salt Lake City, Utah at 1:30 A. M. No claim was ever received from agent-telegraphers on the Marysvale Branch account helper messenger handling mail, baggage and express from the train to the station while they—the agent-telegraphers—were not on duty.

Certainly the practice on both the Denver and Salt Lake Railway and the Denver and Rio Grande Western Railroad with respect to others than those coming within the provisions of the Telegraphers' Agreement, of handling mail, baggage and express from train to station when the agent-telegrapher was not on duty was known to the Organization representatives for many years. However, when negotiating a new agreement effective May 1, 1935 on the former Denver and Salt Lake Railway; when negotiating new agreements on the Denver and Rio Grande Western effective December 27, 1943 and June 1, 1946, also the one effective June 1, 1946 including changes and agreed to interpretations to date of reissue, February 1, 1952, no effort was made by the Organization to change or abrogate the existing practice of others than those covered by the Telegraphers' Agreement handling mail, baggage and express from train to station when the Agent-Telegrapher was not on duty. The Carrier agrees with what your Honorable Board says in connection therewith in your Award 4104, reading:

"* * * that when a collective bargaining contract is negotiated and existing practices are not abrogated or changed by its terms, such practices are just as enforceable as if they had been expressly authorized by the terms of the instrument itself. See Awards 2436, 1435 and 1397."

The stations involved in this dispute are, as previously stated, one man stations and the Carrier contends in the absence of any rule in the Telegraphers' Agreement specifically providing that the handling of mail, baggage and express from the train to the station belongs to Telegraphers, this claim must be decided on the basis of traditional custom and practice, which custom and practice has been as the Carrier has shown in effect for many years without protest from the Organization and without effort on the part of the Organization to change that practice during negotiations of subsequent working agreements. The claim has no merit and should be denied.

All data in support of the Carrier's position have been submitted to the Organization and made a part of the particular question in dispute. The right to answer any data not previously submitted to Carrier by Organization is reserved by Carrier.

OPINION OF BOARD: Prior to January 1, 1951, the seven stations enumerated in the Claim were so-called "one-man stations"—that is, one agent-telegrapher was employed at each of said points. During the hours when said agent-telegraphers were on duty, two passenger trains stopped daily at each of said stations. Effective on the above date the schedules of said trains were changed so that they stopped at said stations at times when no agent-telegraphers were on duty.

The Claim involves the work of handling mail, baggage and express between said trains and the adjacent station buildings. It is the contention of the Employees that prior to January 1, 1951, the station and platform work incident to the handling of the aforementioned items was performed by the agent-telegraphers, and that the Carrier's action in scheduling trains when these employees were not on duty and in having this particular work performed by "groundmen" or "helper-messengers" carrier on the trains had the effect of taking work from the Claimants to which they were entitled under the effective Agreement.

While admitting that the agent-telegraphers have assisted in the handling of mail, baggage and express to and from the trains when time and other duties permitted, the Carrier says that for more than thirty (30) years it has also been the established practice of members of train crews to likewise perform said functions; that the Carrier has consistently claimed and exercised the right to schedule trains at times when no agent-telegraphers were on duty and to use other employees, including messenger-helpers, to perform the services to which the Claimants assert the exclusive right.

Since the Scope Rule of the effective Agreement is general in character and does not undertake to enumerate the functions embraced therein, the Claimants' right to the work which they contend belonged exclusively to them must be resolved from a consideration of tradition, historical practice and custom; and on that issue the burden of proof rests upon the employees.

The record contains substantial evidence of probative value calculated to sustain the Carrier's contention that the work here involved has not been treated by the parties as belonging exclusively to the agent-telegraphers. While it appears that those employees have from time to time assisted in the handling of expressage, baggage and mail to and from the baggage rooms and the trains while on duty, if they were not at the time employed at other duties more directly connected with their primary functions, it also appears that other employees have performed or assisted in performing these duties. It further appears that in the past train schedules have been changed from time to time without regard to whether agent-telegraphers were on duty to handle shipments to and from the station, and also that train employees have been used to do such work.

While the Employees have denied the existence of such custom and practices, we feel obliged to hold that the preponderance of the evidence before us is in favor of the Carrier. In view of this conclusion we do not deem it necessary to engage in an extended discussion of the many Awards that have been cited. Neither is it necessary for us to concern ourselves with the proposition urged by the Carrier that there is a defect in our jurisdiction, requiring notice to helper-messengers who have been engaged in performing some of the work which the Employees claim belongs to them.

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

That the evidence is not sufficient to establish that the Carrier violated 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 2nd day of December, 1954.