Award No. 7078

Docket No. TE-6861

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY
(South-Central and Northwestern Districts)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (South-Central and Northwestern Districts) that:

(1) The Carrier violates the terms of the agreement between the parties when beginning on Saturday, November 12, 1949 at Arimo, Idaho and beginning on Saturday or Sunday, November 3 or 4, 1951, at Kuna, Idaho, and continuing on subsequent Saturdays, and holidays, it fails to call the occupants of the Agent-telegrapher positions at Arimo and Kuna to perform work of said positions on these days, which work is regularly performed by said occupants on other days.

(2) As a consequence of this violation, the Carrier shall compensate the occupants of the Agent-telegrapher positions at Arimo and Kuna in accordance with the appropriate rules of the agreement, each day that the work comprising said positions has been assigned to and performed by others.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties herein referred to as the Telegraphers' Agreement, bearing effective date of January 1, 1952, is in effect on the property. The following facts concern the claim at each individual position involved in this claim:

ARIMO, IDAHO

Prior to September 1, 1949, effective date of the 40-Hour Week Agreement, the Arimo station was open on six days a week, closed on Sundays, with an Agent-telegrapher on duty Monday through Saturday. On and after September 1, 1949, the station has been closed on Saturdays, Sundays and holidays. It has been a one-man station throughout the period involved in the instant claim.

Arimo is a town located seven miles south of McCammon and ten miles north of Downey. Assigned hours of the agent are from 7:30 A. M. to 4:30 P.M. with one hour off for meals. There is around-the-clock service at McCammon and Downey.

The Organization contends that the supplying of this information by members of the agent's force at Nampa violates the Telegraphers' Agreement and that the agreement requires that the work be performd at Kuna by the agent on a call basis.

The Carrier has shown that the work is clerical, and that it is not work covered by the Telegraphers' Scope Rule, and that employes of that craft do not have an exclusive right to the performance of the work.

The Carrier has shown that there is no requirement, either by principle or agreement provision, that the minor clerical functions which occur in connection with such movements must be performed by any one individual at any one point. To so hold would be to foster the ridiculous conclusion that components which go to make up the work of any group or craft cannot be performed by any member of such group or craft but must be compacted to certain individuals. Such a concept would oppose the very essence of collective bargaining.

Rule 184 of Circular 39-2, "Instructions to Agents," classifies stations which are not open for the entire 24-hour period as non-agency stations. The rule provides further that cars picked up at non-agency stations and moved initially on Conductor's Memorandum Waybill will be waybilled at the first open agency. The procedure is of long standing. It does not violate the agreement.

The claim of the agent at Kuna should, for the reasons herein stated, be denied—

(1) The work does not belong to telegraphers under the agreement, and there is no showing that work was performed in derogation of the Claimant's right.

(2) There is no provision of agreement which prohibits the movement of cars from one point to another for waybilling, and in the absence of such a prohibition, the right is reserved to the Carrier.

All information and data contained in this response to Notice of Ex Parte Submission is a matter of record or is known by the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: On Saturday, November 12, 1949, the Conductor of an extra freight train, acting on instructions of the Chief Dispatcher picked up a car of sugar beets at Arimo for movement to Whitney. He did not prepare a waybill. The Claimant prepared the waybill to cover that movement on November 15, 1949. Obviously no agency work was performed on the 12th so that part of the claim is without merit.

On Saturday, November 3, 1951, Saturday, November 10, 1951, and Sunday, November 18, 1951, a Conductor picked up cars of sugar beets at Kuna, signed the bill of lading prepared by an employe of the sugar company and moved the cars to Nampa where the waybill was completed. The station at Kuna was closed on those days.

It appears that for many years the instructions issued by the Carrier to agents and conductors have provided that agencies not open 24 hours per day would be treated as non-agency stations when employes were not on duty, and carload shipments would be moved on conductor's memorandum waybill to the first open agency where the train stopped for billing.

There is no evidence that an agent has ever been called on a rest day to bill such carload shipments and since billing cars is not work belonging exclusively to telegraphers, there is no basis for the claim.

In most of our Awards sustaining claims on the basis that station work at one man stations outside the Agent's assigned hours belongs to the Agent,

there has been some prior practice of calling the Agent to perform the work involved. Here that is not the case so those Awards are not controlling. Here the Carrier merely adopted an alternative procedure in accordance with instructions in effect for many years without any prior challenge thereof.

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 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 29th day of July, 1955.