Award No. 7593
Docket No. TE-7243

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that:

(1) The Carrier violated and continues to violate the terms of the agreement between the parties when it permits or requires train crew employes and other employes who are not covered by the Telegraphers' Agreement to perform the duties of handling express, baggage, U. S. Mail and LCL freight on certain dates at one-man stations at a time that the agent-telegrapher is not on duty at Schurz, Wabuska, Luning, Herlong, Mill City, Thermal, Camarillo, Imperial, Hereford, Gonzales, Morganhill, Roy and Mosquero; and

(2) These duties and the work involved shall be assigned to and performed by employes under said agreement.

(3) The Carrier shall be required to compensate the Agent-telegraphers on the basis of a "call" payment on each occasion on each day the violations take place and shall continue until they are corrected commencing on the following dates:

Schurz, Nevada	commencing	January 15, 1949
Wabuska, Nevada	commencing	January 16, 1949
Luning, Nevada	commencing	June 16, 1949
Herlong, Calif.	commencing	January 17, 1949
Mill City, Nevada	commencing	February 15, 1949
Thermal, Calif.	commencing	May 1, 1949
Camarillo, Calif.	commencing	September 15, 1949
Imperial, Calif.	commencing	September 15, 1949
Hereford, Ariz.	commencing	September 18, 1949
Gonzales, Calif.	commencing	April 1, 1950
Morganhill, Calif.	commencing	June 15, 1950
Roy, N. M.	commencing	September 30, 1950
Mosquero, N. M.	commencing	December 2, 1950

Note: The actual number of days involved, and the compensation due to be determined by a joint check of Carrier's records.

In handling on the property, petitioner cited Rules 1, 2, 32 and 33 of the current agreement in support of the claim here presented.

Rule 1, the Scope Rule, specifies the classifications of employes who come within the scope of the agreement. That rule does not contain any reference to work or the specific duties that may be required of the respective classes of employes named thereunder. Clearly, therefore, it cannot be said to support the claim in this Docket.

Rule 2 covers the classification of employes, rating and filling of positions. There is nothing in that rule which even remotely applies to the instant claim.

Rule 32 of the current agreement reads as follows:

"HANDLING UNITED STATES MAIL

"When the carrying of United States mail and parcel post by the employes becomes unduly burdensome, or interferes with the proper operation of trains, they shall be relieved of such work."

That rule is of no value to the petitioner but to the contrary supports the position of the carrier that the handling of mail to and from train is not work belonging exclusively to agent-telegraphers. This is readily apparent from the fact that the rule provides specifically for relieving employes covered by the current agreement of this work when the same becomes burdensome or interferes with the proper operation of trains and when they are so relieved, the relief is provided by employes covered by another agreement.

Rule 33 provides for adjustment in employes' salary as a result of express commissions being discontinued or created at any office, and the right of employes required to serve the express company to complain of unsatisfactory treatment on part of said express company and to receive due consideration from the carrier. Obviously Rule 33 in no way lends support to the instant claim.

CONCLUSION

The carrier asserts it has conclusively established that the claim in this docket is without basis or merit and, therefore, requests that said claim, if not dismissed, be denied.

All data herein submitted have been presented to the duly authorized representative of the employes and are made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: At each of the thirteen locations named in Petitioner's Statement of Claim, this Carrier maintains station facilities, except at Schurz, Nevada, which was discontinued August 20, 1952. These are one-man stations and it is claimed that employes covered by the Telegrapher's Agreement have the exclusive right to perform the duties of handling all express, baggage, U.S. Mail and LCL freight at these locations.

A similar claim was filed on this Carrier's property, following an alleged violation of the same sort at Animas, New Mexico, on and after April 24, 1949 (Docket TE-5838). That claim was advanced to this Board and disposed of in Award 5877, July 22, 1952. The instant claim was held in abeyance pending the outcome of the previous case. It is noteworthy that certain of the alleged violations in the instant case predated those cited in Docket TE-5838. In consequence, the delay in presenting this Statement of Claim to the Board has caused the Carrier to challenge it as being untimely.

The history of the claim now before us is revealing. On August 3, 1949, Carrier was informed by the Organization that certain of these alleged violations had occurred, some of them dating back to the early months of that year, starting with January 15, 1949. Supplemental claims were added in other letters from the General Chairman dated August 31, and September 15, 1949. On January 31, 1950 Carrier's Assistant Manager of Personnel wrote to confirm earlier discussions in which these claims had been denied. On February 2, 1950, the General Chairman notified the Carrier that this decision was not accepted.

It appears from the record that the parties permitted this claim to remain unprocessed pending the Board's decision in the previous case, Docket TE-5838. After the Board's Award 5877 unsuccessful efforts were made to negotiate a settlement of the instant claim on the basis of that Award. Some two years elapsed and on March 29, 1954, the Carrier's representative informed the General Chairman that he believed the claim had been abandoned.

At the time these claims were filed there was no agreement between the parties limiting the time within which such claims must be appealed to the Board. And neither the Railway Labor Act nor the Board have set specific time limits within which appeals must be made. However, the general purpose of the Act, as stated therein, is

> "(5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." (Section 2, Railway Labor Act).

And on August 21, 1954, the parties accepted the National Agreement which provides as follows in Article V, Section 2:

> ". . . in the case of all claims or grievances on which the highest designated officer of the Carrier **has ruled prior to the effective date of this rule,** a period of 12 months will be allowed **after the effective date of this rule** for an appeal to be taken to the appropriate board of adjustment . . ." (Emphasis added).

It would appear logical that the purpose of such an agreement by the parties would be to put an end to stale claims rather than revive them. But the above quoted sentence from Article 5, Section 2 makes clear that such a limitation was not intended to cut off any pending claims. On the contrary, a period of 12 months is specifically allowed "after the effective date of this rule" for the appeal of such claims to this Board. We cannot deny that for the past several months, prior to the adoption of the August 21, 1954 Agreement, the Employes had been trying to get the Carrier to settle these claims in accordance with this Board's Award 5877. And since appeal to the Board was made within less than twelve months following the August 21, 1954, Agreement, the matter is before us on the merits.

Just why this claim was not brought to the Board's attention at the same time as that filed in Docket TE-5838 is not made clear in the record. It involves the same parties, the same language of the Agreement, the same type of alleged violations and the claim now before us dates from approximately the same time as that brought to our attention in TE-5838 and disposed of in Award 5877, dated July 22, 1952. Our only conclusion can be that the parties are jointly responsible for the delay in getting this matter before the Board, and in our disposition of the Claim this fact must be kept in mind.

Part of this delay has been due to the failure of the Organization to press the Claim concurrently with that in Docket TE-5838. Undoubtedly further delay has been caused by the Carrier's refusal to apply Award 5877 to the thirteen stations listed in the instant claim. It is necessary to repeat

that the parties make their submissions to the Board with the understanding that its awards are to be final and binding.

In Award 5877 we stated that Claims of this sort were without merit insofar as they applied to the handling of U. S. Mail, since the handling of mail is not governed by the parties' Agreement but by Postal Regulations. It was our further conclusion that, at such one-man stations, the handling of other express, baggage and LCL freight was and is exclusively the work of those covered by the Telegraphers' Agreement.

We are now being asked to reconsider and overrule our decision in Award 5877. Under the circumstances, we do not consider it wise or proper to reverse that decision. It was made in good faith, after due deliberation by this Board. Since it involved the same parties, the same language of the Agreement, and essentially the same factual situation, with only a difference in location, we must conclude that the principal issue now before us has already been decided by this Board.

But there is an added factor in the instant case. Paragraph 3 of the Statement of Claim asks that we require the Carrier to compensate the Agent-Telegrapher on a "call" basis for alleged violations dating back to January 15, 1949, a period of eight years. In view of the fact that this claim was denied on the property on January 31, 1950, and the matter was not promptly appealed to the Board, as it should have been, we do not look with favor upon such claims for retroactive settlements. This matter should have been resolved long ago. Not all of the delay in progressing this case can be laid at the Carrier's door. Therefore, the Claim as here stated can be sustained in part only.

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 violated as indicated in the Opinion.

AWARD

Claims 1 and 2 sustained except for the handling of U.S. mail which are denied.

Claim 3 denied for reasons set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January, 1957.

DISSENT TO AWARD NO. 7593, DOCKET NO. TE-7243

The majority erroneously state that—"We are now being asked to reconsider and overrule our decision in Award 5877", whereas we were simply asked to apply fundamental and universally recognized principles to the undisputed facts of record. Such principles have been upheld so many times

in our awards as to form a pattern which should not have been lightly disregarded.

This Award can only be characterized as falling within that small group of awards not founded upon sound principles of contract interpretation.

The majority also erroneously state—"It was our further conclusion that, at such one-man stations, the handling of other express, baggage and LCL freight was and is exclusively the work of those covered by the Telegraphers' Agreement."

Such conclusion disregards entirely the facts of record in this dispute, and our holding in Award 7078 which stated—"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, that is also not the case as the record clearly revealed no practice of calling the Agent-Telegrapher but exactly the contrary.

The Award perpetrates serious error.

We dissent.

/s/ J. E. Kemp
/s/ W. H. Castle
/s/ R. M. Butler
/s/ C. P. Dugan
/s/ J. F. Mullen