

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**GRAND TRUNK WESTERN RAILROAD COMPANY**

**STATEMENT OF CLAIM:** *Claim of the General Committee of The Order of Railroad Telegraphers on the Grand Trunk Western Railroad, that:*

(1) The Carrier violated the terms of the prevailing Agreement between the parties when, commencing on or about September 1, 1949, it unilaterally removed from the scope of the agreement and from the employes thereunder the work of meeting trains, loading and unloading LCL freight and other duties incidental to station work at Rochester, Michigan, outside the regular assigned hours of the Agent at this one-man station, and delegated the performance of such work to train service employes and others who are not covered by the Agreement.

(2) The Carrier shall now restore to the scope of the Agreement and to employes thereunder, the above described work at Rochester, Michigan; and

(3) The employe under the Agreement, occupying the position of Agent of Rochester, Michigan, be compensated under the Overtime and Call Rule provisions of the Agreement for each occasion on each day he has been deprived of such work because of the Carrier's violative action.

**EMPLOYES' STATEMENT OF FACTS:** There is now, and has been at all times since the date of the first agreement on this property, in full force and effect a collective bargaining agreement between the parties, hereinafter referred to as the Telegraphers' Agreement. The current agreement bears the date of July 6, 1951, including revisions. Copies of this agreement and amendments are on file with this Board and are, by reference, included in this submission the same as though set out word for word.

This dispute involves interpretation of the agreement, and has been handled on the property as prescribed by the Railway Labor Act, as amended, and in accordance with the usual handling of grievances. The claim was denied in succession by and including the top ranking official of the Carrier and is now properly submitted to your Board for adjudication.

The claimant involved in this dispute is the occupant of the agent-operator position at Rochester, Michigan, a one-man station on the Detroit

The claim has been progressed in the usual manner on the property, with the exception of that portion dealing with interchange, and has been declined.

All data contained herein have in substance been submitted to the employees and are a part of the instant dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The locale of this dispute is Rochester, Michigan. It is a one man station, that is, one employe was assigned at this station prior to September 1, 1949. The one employe so assigned worked six days; however an assigned week of Monday through Friday was then established with the station being closed on Saturdays, Sundays and holidays.

Claim is made that the Respondent violated the terms of the effective agreement when it allegedly improperly removed the loading and unloading of LCL freight, and the performance of other duties incidental to the operation of a one man station; and assigned this work performance to train service employes not covered by the effective agreement. Request is made that this work be restored to the Agent-Operator position at this station and that reparations, to the extent of a "Call", be granted for each instance said alleged violation occurred.

The Organization pointed out that at all times prior to September 1, 1949, the work in question had been performed by the agent and had likewise been considered as being the exclusive work of such agent, as evidenced by the fact that subsequent to this date he (agent) had, on many occasions, been called out to perform like duties on Saturdays. It was asserted that the handling of freight from station to train as well as interchange work, outside of the agent's assigned hours, belonged to the agent since such work is exclusively assigned to and performed by him at all other times within the meaning of presently existing provisions of the current agreement.

The Respondent countered with the assertion that the work in question had never been performed by telegraphers to the exclusion of train crews particularly when such work accrued outside the assigned hours of the agent. It was pointed out that it had been the custom and practice, dating from 1910, for train crews to unload LCL freight and place same in station rather than hold the agent on duty. It was further contended that this arrangement continued after the agreement of September 1, 1949, and was in no way abrogated by the agreement effective February 1, 1951.

This claim as initially instituted concerned the complaint that train crews unloaded freight and placed same in freight house. The claim as it presently appears, however, has been expanded to include the alleged improper performance of interchange work. The record here discloses that the phase of the claim as it relates to interchange work was not handled on the property in accordance with the requirements of the Railway Labor Act, so therefore this question is not properly before this tribunal and will not be considered. The only question that will be disposed of here is the question of alleged improper handling of freight at this station.

An examination of prior awards on the question of work performance at (as here) one man stations reveals a marked divergence in the end result reached. They are somewhat uniform in one pertinent particular, however, that is, the criteria applied was based on the parties' interpretation of the Scope rule as evidenced by custom and practice.

Here, there is evidence that the Agent has been either called out, or held over, to perform service outside the hours of his regular assignment. It is likewise true that there is equally substantial evidence that train crews have, over the years, performed similar service at times when the agent was not on duty. This latter fact was likewise true after the agent's basic work week was reduced from six to five days. Likewise a prevailing agreement was re-

negotiated in 1951 without amendment or contractual change that would affect the prevailing practice.

What we stated in Award 6824, wherein we held:

“\* \* \*

“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; \* \* \*.

“Since the Scope Rule of the effective Agreement is general in character and does not undertake to enumerate the functions embraced therein, the Claimant's 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 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. \* \* \*”

is likewise true here.

**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 Carrier did not violate the effective Agreement.

#### AWARD

Claims 1, 2 and 3 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of November, 1957.