

Award No. 8261
Docket No. TE-7846

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Colorado and Southern Railway that:

(1) The Carrier violated the terms of the Telegraphers' Agreement when it permitted and required Trainmen on Train No. 7 to handle mail, baggage, cream and express on and off trains at Trinchere, Branson, Folsom, Des Moines, Mt. Dora and Grenville; and Trainmen on Train No. 8 to handle mail, baggage, cream and express on and off trains at Grenville each day commencing March 7, 1955, and continuing until these violations are discontinued; and

(2) That Carrier will be required to compensate Agent-Telegraphers B. Baker at Trinchere; C. Sandoval, Branson; C. D. Martinez, Folsom; V. Conder, Des Moines; and B. Lovin, Mt. Dora, regularly assigned Agent-Telegraphers at the respective stations, or their successors, at the rate of one call for each occasion; and

(3) The Carrier shall be required to compensate the senior idle employe on the basis of a day's pay on each occasion that employes not under the Telegraphers' Agreement are required or permitted to handle mail, cream, milk, baggage and express at Grenville, beginning with March 7, 1955, and continue until the practice is discontinued.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the parties effective October 1, 1948, including changes and agreed-to interpretations to date of reissue January 1, 1955; rates of pay effective December 3, 1954.

The stations named in the Statement of Claim are located on the main line of the Colorado and Southern Railway Company and are manned by one employe—an Agent-Telegrapher—at each station except Grenville. The station at Grenville was closed by the authority of the Colorado Public Utilities Commission during the year of 1942.

The hours of service and the schedule of the trains involved are reproduced as follows:

and the depot or between train and station building or storage box or receptacle, and, furthermore, in disposal of Trainmen's Case No. 1438, a dispute which involved the claim of passenger Trainmen for payment of freight rates instead of passenger rates when they are required to load and/or unload mail, baggage, cream and express on the same trains and in the same territory as covered by the instant claim, Assistant Vice President J. D. Walker, the duly authorized representative of the Carrier, on August 24, 1950, reached a mutual understanding with Vice President E. B. Boggs and General Chairman J. A. McNamara, of the Brotherhood of Railroad Trainmen, that the head brakeman on passenger trains Nos. 7 and 8 would be paid freight rates whenever he was required to handle mail, cream, milk, baggage, express, etc., from the mail or baggage car to the depot and/or handle such commodities from the depot to the mail or baggage car. These various understandings, agreements and attendant forms of additional compensation over the years recognizes and confirms the propriety of requiring other than employees covered by the Telegraphers' Agreement to handle the head end commodities in question in the manner now made subject of dispute, and the aforementioned Rule 26(a) of the Telegraphers' Agreement upholds and preserves the right of the Carrier to require employees covered by the Telegraphers' Agreement to assist, when necessary, in the handling of such station work.

The principle involved in this dispute has been definitely resolved by several of your Board's earlier decisions, particularly Award 4392, which entailed the same principle, the same petitioning Organization and the same respondent Carrier, and wherein the opinion was expressed by the neutral participating therein that no part of the work being performed is exclusively the work of a Telegrapher but could well be incidental to and properly the work of employees under agreements with other crafts. The facts in the case here before us involve no questions whatever for determination beyond the controlling effect of the fundamental truths therein conceded. For further support, also see Award No. 4 of Special Board of Adjustment No. 100, Frank P. Douglass, Chairman, on the St. Louis Southwestern Railway Company, concerning joint BoRT-ORT Docket Cases Nos. 6 and 14.

The Carrier earnestly submits that there is no rule, interpretation, custom, practice or sound reason which will support the claim in this case and urges with deference that same be denied.

The Carrier affirmatively states that all data herein and herewith submitted has been previously made known to the Employees' representatives.

OPINION OF BOARD: In this docket claim is made on behalf of certain Agent-Telegraphers at certain named points on the Carrier's lines. It is contended by Petitioner that certain employees not covered by the Telegraphers' Agreement are permitted and required to perform head-end work on Trains 7 and 8, when, under the terms of the Telegraphers' Agreement, such work belongs to the respective Agent-Telegraphers.

The record shows that at each of the stations involved an Agent-Telegrapher is employed except at Grenville where no Agent-Telegrapher or other personnel is employed. Therefore, at Grenville Petitioner asks for a day's pay for each occasion when train service personnel handle head-end commodities, whereas at the other stations involved request is made that the assigned Agent-Telegrapher be allowed a call when such handling by train service employees takes place outside of the Agent-Telegrapher's regular hours.

Claims involving the handling of head-end work have been before the Division many times. One of the tests applied has been whether or not the work at issue was work to which the Organization had exclusive right because of specific Agreement provisions or because of long mutually accepted practice and custom. In regard to such head-end work, performed out of the regular hours of the Agent-Telegrapher, the Division as one measure has generally looked to the practice with aspect to giving a call to the assigned Agent-Telegrapher. Award 7078.

The first question here goes to the matter of whether or not Agent-Telegraphers at the stations in question have had the exclusive right to perform the head-end work either by specific agreement provision or on the basis of tradition, custom and practice. On the basis of the record before us we must find that the Agent-Telegraphers have never had the exclusive right to the performance of the head-end work at these stations. Neither is there any evidence of probative value before us which shows that the Agent-Telegraphers in question have ever been called to perform such work outside their assigned hours. Under such circumstances there is no basis on which this claim can be sustained. It is supported neither by specific agreement provisions nor by tradition, custom and practice. The preponderance of such evidence as the record contains does not support a finding of exclusive right based upon custom and practice.

In finding that this claim is without merit we are following Awards made by the Division where similar issues involving similar circumstances were considered. See Awards 5949, 4392, 6032, 6824, 7078.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1958.