

**Award No. 9834
Docket No. TE-8750**

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, St. Paul, Minneapolis and Omaha Railway, that:

1. Carrier violated the agreement between the parties when it failed and refused to compensate E. E. Kolbinger, agent-telegrapher, Herman, Nebraska for a two hour call on his rest day, March 28, 1955, after having been called by Conductor Morrissey of Train No. 16, and performed the work necessary to protect the shipment of a dog.
2. Carrier shall now compensate E. E. Kolbinger for a two hour call payment of a two hour call for March 28, 1955.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties dated March 1, 1956. At Herman, Nebraska there is a negotiated position of Agent-Telegrapher owned by E. E. Kolbinger. On Monday, March 28, 1955, one of the rest days of Claimant Kolbinger, Conductor Morrissey of Train No. 16 called Mr. Kolbinger at his home and informed him that in Train No. 16 he had a shipment of a dog to be unloaded at Herman. Train No. 16 operates on a time card Monday, Wednesday and Friday, bringing express from Omaha on these days only. They are due at Herman at 9:25 A. M. but generally they do not arrive until 12:30 P. M. to 3:30 P. M. Train No. 16 has handled express and mixed train service since about 1950. Mr. Kolbinger received the call for work at 12:35 P. M. and performed the service required of taking charge of the express shipment of the live stock (a dog).

The Carrier in declining this claim took the position that the work performed by Claimant Kolbinger on March 28, 1955 was exclusively Railway Express business and in no way connected with the Railway Company opera-

OPINION OF BOARD: The facts are not in dispute. Claimant, the regularly assigned Agent-Telegrapher at Herman, Nebraska, was notified by the conductor of a train on Monday, March 28, 1955, one of the Claimant's rest days, that an express shipment—a live dog—was being left at the station. The Claimant then went to the station and performed the duties which were necessary. He claimed pay under that portion of the rest-day rule which provides payment "at the rate of time and one-half with a minimum of two hours * * *".

The Carrier declined the claim on the ground that it was wholly Railway Express business. The issue is whether the compensation rules of agreement between Carrier and Employe apply to express work.

The relationship between the Carrier and the Railway Express is such that one appears to be the alter ego of the other, and in Award 392 (Sharfman) this Board said that:

"* * * it has been repeatedly recognized that a sound and realistic adjustment of the relations between the three parties justifies procedure against the railroad company in connection with grievances against the express company."

See also Awards 211 (Garrison) and 2603 (Shake) in both of which awards sustaining the claims were made under similar circumstances.

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 Employe involved in this dispute are respectively Carrier and Employe 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 by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 17th day of February, 1961.