

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—Eastern Lines**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway System; that

1. The Carrier violated and continues to violate the Agreement between the parties when, beginning April 24, 1955, it removed from the scope of said Agreement and from the employees covered thereby at Revere, Wyaconda, Corin, Rutledge, Baring, Elmer, Ethel and Bucklin, Missouri; and Romeo, Lockport, Coal City, Mazon, Verona, Kinsman, Ransom, La Rose, Edelstein, Princeville, Monica, Laura, Williamsfield, Ormonde, Smithshire, Media, Dallas City and East Ft. Madison, Illinois, the duties of loading, unloading and handling mail, baggage and express to and from trains arriving and departing at said stations outside the assigned hours of employees covered by the Telegraphers' Agreement, a part of whose duties it is and has been to perform this work;

2. The Carrier improperly transferred the aforesaid duties to members of train crews and/or to other employees on certain trains who are not subject to the Telegraphers' Agreement;

3. The duties and the work here involved shall be restored to said agreement and to the employees covered thereby; and

4. The Carrier shall compensate the agents at the stations named herein and/or at any other station between Chicago and Kansas City at which the violate practice also occurs under the call and/or overtime rules for each occasion on which employees not covered by the Telegraphers' Agreement have performed the aforesaid duties and work at these stations since April 24, 1955 and thereafter until the violation ceases.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

For a number of years the Carrier has designated certain trains on which mail, baggage and express is handled for its stations between Chicago, Illinois, and Kansas City, Missouri.

ment such extra work as occurs at one-man stations beyond the Agent's normal tour of duty." (Emphasis supplied.)

This principle, which has been repeatedly adhered to by your Board, throughout the years, definitely supports the respondent Carrier's action in this dispute of establishing a bona-fide clerical position, that of traveling station attendant, to handle mail, baggage and express outside the regularly assigned hours of the station force at the stations involved in this dispute.

Moreover, the Carrier wishes to direct the Board's attention to the fact that in the aforementioned Award 3931, the claim was sustained only until the date the positions of station attendant fully covered by the Clerks' Agreement, were established to take over the duties of handling mail, baggage and express to and from trains outside the Agent's regularly assigned hours at so-called one-man stations, thereby tacitly approving the Carrier's method of handling mail, baggage and express complained of by the Employees in this dispute.

In conclusion, the Carrier respectfully submits that the Organization has cited no rule or understanding, agreement or otherwise, which can legitimately be considered as having been violated. The claim is therefore without merit and should be denied in its entirety.

The Carrier is uninformed as to the arguments the Organization will advance in their exparte submission, and accordingly reserves the right to submit additional facts, evidence and argument as it may conclude are required in replying to the Organization's exparte submission or any subsequent oral arguments or briefs placed by the Organization in this dispute.

All that is contained herein is either known or available to the Employees or their representatives.

OPINION OF BOARD: This is a Scope Rule case. The facts disclose that the Carrier established a position of Traveling Station Attendant who traveled certain trains and it was his duty to handle the mail, baggage and express between the trains and depot at times when employees of the depot were not on duty.

The Organization claims that this is a violation of their agreement and that these employees should be paid a call for each time the Traveling Station Attendant performed these services.

An examination of cases decided by this Division shows that as to this particular type of work various Carriers and their Organization have approached the matter differently. However, in regard to this Carrier there have been fourteen awards holding that this work fell exclusively within the jurisdiction of the telegraphers (602, 1082, 1083, 1084, 1273, 1274, 1275, 1566, 2155, 2418, 2419, 2420, 6840, 6841) while in the awards above dealt with somewhat different situations exist in that in some the Carrier had used an independent contractor; in others a trucking company and in still others train service employees.

It is of no significance how the work is done, if it does, in fact belong exclusively to a particular organization. An examination of the fourteen previously decided awards does not show that they are palpably wrong and to overturn them would have the effect of creating chaos when the Board should be trying to establish precedents to guide the parties. (See Awards 2526, 2926 and 6784.)

It has also been urged that the Claimants have not been specifically named, however, this issue was not raised on the premises and not being jurisdictional, will be deemed to have been waived.

In the light of the above determination the Carrier shall compensate the Claimants at all stations named in (1) of the claim if the Traveling Station Attendant did, in fact handle mail, baggage and express which under this award should have been handled by the Claimants.

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 Agreement has been violated.

AWARD

Claim sustained as modified in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of September, 1961.

DISSENT TO AWARD NUMBER 10074, DOCKET NUMBER TE-8790

Award 10074 is premised on the erroneous theory that by reason of certain prior awards involving these same parties, the disputed work falls exclusively within the jurisdiction of the Telegraphers. Such prior awards, on the contrary, were premised on the theory that all station work at one-man stations should be performed by the one person employed at each such station irrespective of the nature of the disputed work being such that it did not fall exclusively within the jurisdiction of the Telegraphers or the Clerks who are involved here. (Compare Opinion in Award 3931.) Not one of those awards held, or even intimated that a full time position could not properly be established and assigned to perform an accumulation of such work.

This Award 10074 is premised on erroneous grounds and we dissent.

/s/ J. F. Mullen

/s/ P. C. Carter

/s/ R. A. Carroll

/s/ W. H. Castle

/s/ D. S. Dugan