

Award No. 12530
Docket No. TE-11080

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Western District), that:

1. The Carrier violated the Telegraphers' Agreement when it removed the work formerly performed by Agent-Operator R. H. Miller at Sylvania, Ohio, and his successors, and transferred such work to employes who are not covered by the Telegraphers' Agreement. The work consists of issuing bills of lading for outbound freight shipments; preparing waybills for outbound freight shipments; preparing freight bills of inbound shipments; performing the bookkeeping work in connection with the inbound and outbound shipments; collecting charges on the inbound and outbound shipments and accounting for same.

2. Also that for each day that the disputed work was performed by employes not covered by the Telegraphers' Agreement an additional day's pay of eight hours at the straight time rate of the Agent-Operator at Sylvania be allowed to the senior idle extra man on District No. 5, to be determined by a joint check of the Carrier's records, and in the event no extra men were idle that an equal amount be allowed the senior idle regular assigned employe of District No. 5 who was idle on his rest day.

EMPLOYEES' STATEMENT OF FACTS: Sylvania, Ohio, is located 10.16 miles west of Toledo, Ohio, on the Toledo Division of this railroad. The Agreement in effect between the parties, at page 70, shows a negotiated position of agent-operator on Seniority District No. 5 at Sylvania, Ohio. The position was owned by Agent-Operator R. H. Miller at the time this claim arose. The Sylvania, Ohio, station is what is known as a one-man agency. The only employe the Carrier has at Sylvania, Ohio, is the agent-operator under the Telegraphers' Agreement. He has assigned hours 7:00 A.M. to 4:00 P.M. with one hour out for lunch daily except Saturday and Sunday, which are his assigned rest days. This one-man agency has existed for twenty-five years or more.

- (a) any position was abolished or removed; that
- (b) the work of delivering pay checks is assigned to clerks by specific reference in the applicable Agreement, or
- (c) is work belonging to clerks to the exclusion of all other classes or crafts, a denial award will be made (Award 7784)'."

See also Third Division Awards Nos. 6066, 6416, 6587, 6655, 7031, 7299, 7348 and 8320.

It is the Carrier's position that the several awards cited support the Carrier's position in this dispute and conclusively refute the claim of the Organization.

CONCLUSION

The Carrier has shown that:

1. The transfer of work of preparing waybills and freight bills for LCL freight from Sylvania Station did not violate the Telegraphers' Agreement.
2. No rule has been cited by the Organization in support of this claim.
3. The burden of proof rests upon the petitioner.
4. Awards of the NRAB support the Carrier's position.
5. The claim is without merit and should be denied.

OPINION OF BOARD: The facts are as follows: Effective the latter part of September, 1957, the Carrier discontinued at its Sylvania, Ohio Station, the work of preparing waybills for outbound l.c.l. shipments originating at that point and the work of preparing freight bills for l.c.l. shipments destined to that point as well as other clerical work in connection therewith and had such work performed at its freight station at Toledo, Ohio, which is 10.2 miles east of Sylvania.

Petitioner contends that all station work in a one-man station agency belongs to the agent, an employe under the Telegraphers' Agreement, and may not be unilaterally removed and assigned to others so long as the one position at such a station remains in existence. Petitioner seeks to support its position by pointing out that the very reason for the existence of the position of a station agent is to perform work which is essentially clerical in nature, viz:—handling bills of lading, waybills, freight bills and related matters. Furthermore, it states that the occupant of the position in question for many years has performed such work.

The Scope Rule merely lists the positions that are subject to the Agreement; the said Rule is general in nature, does not delineate the work covered and the Carrier takes the position that under this type of rule it is therefore necessary to look to past practice and custom to determine whether the work in question has been considered as the exclusive work of telegraphers; the record supports the conclusion that the work in question is not exclusively

performed by telegraphers, but is work that is normally performed by the clerical staff, and this is especially so where there is enough of it to amount to a full time assignment. The record also shows that the Petitioner itself wrote a letter to the Carrier on February 27, 1958, which states, inter alia, as follows:

"We wish to make it plain that if you establish a position under the Clerks' Agreement at Sylvania Station, to assist the agent-operator at Sylvania we have no objection. What we do object to and think it is a violation of our agreement, is to remove work from the agent-operator at Sylvania and have it transferred to and performed at Toledo by employees not under our agreement."

The Carrier argues from the above quoted written statement by the Organization that the work claimed herein admittedly is work which not only does not belong exclusively to employees under the Telegraphers' Agreement, but is work which may be assigned to clerks.

The question involved in the instant matter is not a novel one and has been before the Board on many occasions. The Awards that have considered this issue have not been consistent in their holdings and it is unnecessary to attempt here to reconcile the many conflicting opinions. The fact is that they differ sharply, and both the Carrier and the Organization have cited awards that lend support to their respective positions. Among others, the Organization has relied heavily on Awards 4392, 1121, 3606 and 5993. For example, Award 4392 (Carter) held:

" * * * We have held many times, however, that station work in one-man stations belongs to the Agent, a position within the scope of the Telegraphers' Agreement. * * * The decision in the present case is based on the fact that the Agent-Telegrapher at a one-man station owns all the station work at that point and not on the ground that the signing of bills of lading and billing cars is the exclusive work of a Telegrapher. * * * "

With respect to the above case and others which reach a similar conclusion, this Board is in disagreement; more importantly, this Board finds nothing in the Agreement which supports such a conclusion. Furthermore, we feel that for Award 4392 to hold that a one-man station agent owns all the station work at that point, when the parties have not so provided in their Agreement, is to engage in judicial legislation, which this Board has no authority to do. If the parties intended to endow a one-man station agent with exclusive ownership of all the station work at a given location, they could have simply so stipulated in their Agreement. We are precluded from adding, subtracting or modifying the substantive provisions of an Agreement. (See Awards 4259, 8538 and 12192.) Finally, it is well settled by a long line of opinions, that the Petitioner has the burden of proving that the clerical work here in question must have been traditionally, customarily and exclusively performed by members of the Organization claiming the said work. In the instant case, the Petitioner has not sustained its burden of proof.

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

That the parties waived oral hearing;

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 has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.

DISSENT TO AWARD NO. 12530, DOCKET NO. TE-11080

For more than a quarter of a century this Board has attempted to place reasonable and reasonably consistent interpretations on agreements by which railroads and their employees have expressed their relative rights and obligations.

One of the most distinctive features of those agreements is their dependence upon tradition, custom and practice to indicate the areas of agreement coverage and reservation of work.

Consistent application of the observable effects of tradition, custom and practice has established dependable guide lines in many types of disputes which, if continued, will become so well established that the number of such disputes is certain to be diminished and thus the intent of Congress, as expressed in the Railway Labor Act, will find fulfillment.

In *Slocum v. Delaware, Lackawanna & Western Railroad Company* (339 U.S. 239), the Supreme Court of the United States said:

“ * * * The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. The Adjustment Board is well equipped to exercise its congressionally imposed functions. Its members understand railroad problems and speak the railroad jargon. Long and varied experiences have added to the Board's initial qualifications. Precedents established by it, while not necessarily binding, provide opportunities for a desirable degree of uniformity in the interpretation of agreements throughout the nation's railway systems.”

By a long line of consistent prior awards dealing with station agency work at one-man stations this Board has created that “desirable degree of uniformity” envisioned by Congress and the Supreme Court.

But in this Award the Referee disagrees. Obviously when he said "this Board" he meant "this Referee". And I heartily disagree with the Referee. The author of Award 4392 was no novice at the task of evaluating precedent. Neither was the author of the memorandum attached to Award 1680, q.v.

As long ago as Award 993, a Referee who disagreed with an established precedent, nevertheless said:

"Precedent must govern; logic yields to the weight of accumulated awards."

In Award 6303, Referee Shake pointed out that:

" * * * The vitality and usefulness of this agency largely depends upon its consistent record for putting an orderly end to controversies."

And finally, since the Referee has indicated a predilection for the more recent awards, I point to Award 10908, where Referee Moore, notwithstanding his disagreement with the established precedent, followed that precedent.

When the parties here involved negotiated their agreement in the full knowledge that such agreements have been consistently interpreted to mean that all station work at one-man stations belongs exclusively to the agent, they expressed a desire to continue and apply that interpretation to such stations on this railroad.

The Award, therefore, misinterprets the Agreement, and I dissent.

J. W. Whitehouse
Labor Member