

Award No. 14166
Docket No. TE-13991

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad, that work (preparing inbound freight bills both C/L and LCL, preparing ledger cards and collecting money from credit patrons) formerly performed by the Agent at Bicknell, Martinsville, Indiana, Sandborn, Edwardsport, Lyons, Switz City, Worthington, Spencer, Mooresville, Greenwood and N. Vernon, but instead transferred to clerks in Indianapolis Freight Station employes not covered by the Telegraphers' Agreement are being used in violation of the scope of the Agreement.

Because of this violation, Claimants Reid Bicknell, C. T. Railsback, Floyd Evans, Max Lawson, Ray McDonald, M. L. Frost, A. S. Gerkin, Ray Cloe and G. M. Hurley are entitled to be paid at his rate one call for each of the following dates: C. T. Railsback, Agent, Edwardsport and Sandborn, April 19, 20, 21, 22, 25, 26, 27, 28, 29, May 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20 and 23, 1960, Reid Bicknell and Max Lawson, Agents, Bicknell and Switz City, April 26, 27, 28, 29, May 2, 3, 4, 5, 6, 9, 10, 11, 12, 16, 17, 18, 19, 20 and 23, 1960, Floyd Evans and M. L. Frost, Agents, Worthington, Lyons and Martinsville, May 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20 and 23, 1960, Ray McDonald and A. S. Gerkin, Agents, Spencer and Mooresville, May 10, 11, 12, 13, 16, 17, 18, 19, 20 and 23, 1960, and Ray Cloe, Agent, Greenwood, and G. M. Hurley, Agent, N. Vernon, May 17, 18, 19, 20 and 23, 1960, and for each named Agent above one call at his rate of pay for each subsequent week day until such time violation ceases.

EMPLOYEES' STATEMENT OF FACTS: The facts in this dispute are set out sufficiently in the correspondence had on the property to support the claim above. Under date of May 23, 1960, District Chairman Max Lawson, Switz City, Indiana, addressed Mr. N. D. Payne, Carrier's Superintendent-Stations, at Indianapolis, Indiana, lodging the claim above. Mr. Payne replied as follows:

tions of agreements concerning rates of pay, rules and working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that no provisions of the Rules Agreement were violated, and the Claimants are not entitled to the compensation which they claim.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: A Joint Statement of Facts appears in the record and nothing can be gained by repeating it here. All of the Claimants, with the exception of two of them, were operating one-man Agencies. Generally speaking, the work involved is credit customer's work which had been performed by Claimants. However, it was by the unilateral action of the Carrier that work was assigned to employees covered by the Clerks' Agreement. No position was abolished and but a small amount of work at these stations was taken away.

Claimants rely on the Scope Rule of the Agreement to support their position and contend that if Carrier was going to take away some of their work it should have been after negotiation with the Petitioner.

In contradiction of Claimants' position, Carrier asserts that the Scope Rule relied on by Claimants is general in nature and does not by its terms give to Claimants the exclusive right to the performance of the work involved and that the Claimants have failed to establish that by tradition, custom and practice this was the exclusive work of employees covered by the Telegraphers' Agreement.

Fundamentally, Carrier has the right to make a change in the operation of its business in accordance with the requirements of the service at any time to meet changing conditions and the employees have no cause for complaint unless the change in some way violates a rule or rules of the Agreement. See Award 6168 (Wenke); Award 12991 (Hall).

The Scope Rule in the instant case is general in scope — it does not define nor delineate work but rather it merely lists the titles of employees whose hours of service, working conditions and rates of pay are prescribed by the agreement. In interpreting such general type Scope rules this Division has consistently applied the principle of determining whether or not the work in dispute has been performed exclusively by Claimants through tradition, custom and practice on the property of the Carrier involved, and that under this principle the burden rests with the Claimants to prove the claim — See Award 11908 (Hall) and the awards cited therein.

In the following awards which are similar in fact and principle to those in this case the conclusion was reached that Claimants had failed to sustain the burden of proving that the work was exclusively the work of Claimants or of the Agencies to which they were assigned. See Award 4969 (Carter); Award 10970 — (McMillen) Award 11720 — (Hall). We can find no valid reason for reaching a different conclusion here.

The work involved, herein, is clerical, not traditional to telegraphers but performed by them in rounding out their workday. As such it does not belong to Claimants by virtue of the Scope Rule. See Award 12395 — (Wolf).

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

The Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1966.