

Award No. 15750
Docket No. TE-14736

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Boston & Maine Railroad, that:

1. Carrier violated and continues to violate the Agreement between the parties when effective September 1, 1962, acting without agreement it removed from the employees subject to the Agreement at the stations named below the work of checking, rating, preparing waybills, preparing freight bills, and all other work incidental to the handling of less than carload freight shipments originating at and destined to said stations named below, and transferred said work to employees not subject to the Agreement at other stations,

Newburyport, Massachusetts
Conway-Mt. Whittier, New Hampshire
Exeter, New Hampshire
Rochester-Milton, New Hampshire
Rockingham Jct., New Hampshire
Somersworth, New Hampshire
Wolfeboro, New Hampshire
Pepperell, Massachusetts

2. Carrier shall restore the work listed above to the agency stations named above and to the employees subject to the Agreement at the respective stations from whom it was unilaterally taken.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective August 1, 1950, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

All of the stations involved in this dispute are places at which one position covered by the Agreement is maintained. There are no other Carrier employees located at any of these stations. The Agent positions at Conway and Mt. Whittier, New Hampshire, and those at Rochester and Milton, New Hampshire, were combined pursuant to agreement between the parties.

On September 1, 1962, pursuant to appropriate procedures of the Interstate Commerce Commission, the company cancelled all tariffs covering interstate less carload freight shipments consigned to or from the above listed stations. Carload and intrastate less carload traffic continues to be handled at each point. There was no change in the assignment of employees at any of the affected stations.

The contention is the company transferred the handling of less carload interstate shipments to the stations noted above and to employees at such stations not covered by the Agreement.

The fact is no such transfer took place. The handling of such shipments was discontinued pursuant to the provisions of the Interstate Commerce Act. The few patrons formerly using such service may thereafter have elected to ship or receive from any one of a number of neighboring Boston and Maine stations. In some cases, they have patronized stations of other railroads in the area. In the alternative, they may have elected to use any one of the numerous motor common carriers available, parcel post, or express service. Neither the company nor the organization can say which, if any, of these alternatives were elected. Neither controls the traffic. Certain it is, however, the company did not transfer the handling of work relating to any less carload shipments from one station to another.

There has been no violation of the Agreement, and the appeal is denied.

Yours very truly,

/s/ R. W. Pickard
Vice Pres.-Personnel"

The claims here involved were filed and handled in the usual manner up to and including the highest officer of the Carrier and have been denied.

CARRIER'S STATEMENT OF FACTS: On September 1, 1962, pursuant to appropriate procedures of the Interstate Commerce Commission, the Railroad cancelled all tariffs covering interstate less-than-carload freight shipments (LCL) consigned to or from the stations in the above outlined claim.

Carload and intrastate LCL traffic continues to be handled at each point.

This is a non-monetary claim.

OPINION OF BOARD: This is a claim for restoration of work in connection with LCL freight shipments allegedly transferred by the Carrier from employees assigned to the eight one-man agency stations enumerated in the statement of claim to employees of another craft at other stations.

Carrier denies that any such transfer of work took place. It contends that the handling of interstate LCL shipments was discontinued at these stations, and that if any business formerly constituting interstate LCL shipments is handled at other stations, it is done at the election of the patrons.

If the Carrier's contention is true, there certainly could have been no transfer of work, as alleged by the Employees.

This Board has held in many awards that under such circumstances the burden of establishing facts sufficient to support the claim is upon the Employees.

The only evidence offered by the Employees is an exhibit of copies of freight bills covering interstate LCL shipments to certain consignees. These documents show, in the line captioned "Destination", the names of some of the one-man stations; but, they also show, under the caption "Station" in the line headed "Consignee", the names of the stations of Dover, Portsmouth, etc., the stations to which, the Employees allege, the work was transferred. No explanation of the use of both station names is offered, and no statement is made as to the precise manner in which these exhibits support the position of the Employees.

It is our judgment, therefore, that the Employees have not met the burden of proof required to establish grounds for a valid claim. Accordingly, the claim must be denied.

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 Employee 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 no violation of the Agreement is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1967.