

**Award No. 16784**  
**Docket No. TE-14733**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Nicholas H. Zumas, Referee

**PARTIES TO DISPUTE:**

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

**NEW YORK CENTRAL RAILROAD**  
**(Southern District)**

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

1. The Telegraphers' Agreement was violated when on the 10th day of August, 1962, Conductor Oscar Hilton, Post cut, Engine 8401, picked up and signed bill of lading at Ft. Harrison, Indiana, on carload SAL-22904. Asst. Agent Operator A. J. Marshall was ready and available to perform this work.

2. Carrier shall compensate Asst. Agent Operator A. J. Marshall, headquarters Indianapolis, Indiana, for one call under Rule 1 (Scope) at the rate of \$2.5288 per hour for two hours, total \$5.05.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. A. J. Marshall is duly assigned to the position of Assistant Agent Operator, Indianapolis, Indiana. His job is bulletined to work in the territory which covers the positions at Ft. Harrison, McCordville, Fortville and Pendleton, Indiana. He has assigned hours of 8:00 A.M. to 5:00 P.M. with one hour for lunch. His work week is Monday through Friday with assigned rest days of Saturday and Sunday.

The Assistant Agent Operator position performs all of the work formerly performed by the Agent Operator at Ft. Harrison. One of the duties of the Agent is the handling of carload shipments.

On August 10, 1962, the Post cut Engine 8401 was doing switching at Ft. Harrison, Indiana, and Conductor Oscar Hilton of this train while at Ft. Harrison signed the bill of lading and picked up the bill of lading for car SAL-22904. The Carrier did not call Claimant A. J. Marshall, who was the Assistant Agent Operator to perform this work which is part of his assigned duties at all of the locations on his territory. Claim was made for a call payment and appealed to the highest officer designated to handle claims and grievances and declined by him. Claim is now properly before your Board for final adjudication.

**CARRIER'S STATEMENT OF FACTS:** There is in effect an Agreement between the parties to this dispute dated February 1, 1962, a copy of which is on file with your Board, and by this reference is made a part hereof. Cited as supporting the claim progressed here is Article No. 1, quoted as follows for ready reference:

**"ARTICLE 1. SCOPE**

(a) Employees in all positions specified in this schedule, held by telegrapher-clerks, telephone operator-clerks (except switchboard operators), agents, agent-telegraphers, agent-telephoners, operator-clerks, levermen-clerks, towermen-clerks, tower and train directors, block operator-clerks, staffmen, ticket agents, car distributor-clerks, chief operator-clerks, wire chiefs, copy operator-clerks, or copyists, relief or extra agents, and operators of mechanical telegraph machines used for receiving or transmitting messages, will be considered 'telegraphers' within the meaning of these articles, irrespective of service performed, and will be governed by the regulations and paid at the rates specified herein. When new positions are created, the provisions of this agreement will apply and wages will be fixed to conform to positions of similar class.

(b) Where existing payroll classification does not conform to paragraph (a) of this article, employees performing service in the classes specified therein shall be classified in accordance therewith."

Fort Harrison is located approximately eleven miles east of Indianapolis. It is a so-called Centralized Agency Route point. An Assistant Agent Operator, such as claimant in this case, uses the agency facilities while taking care of the service requirements of patrons in this particular portion of the territorial route.

On Friday, August 10, 1962, while performing switching service at Fort Harrison in picking up Car SAL 22904, Conductor Oscar Hilton was requested to sign a U. S. Government Bill of Lading by the Transportation Officer of the U. S. Army Support Command, (Carrier's Exhibit No. 1). Conductor Hilton complied with the shipper's request, and, as customary, signed the Indianapolis Terminal Agent's name, "T. E. Van Cleve," per his own initials, "O. H.," on the form. Thereafter, the bill of lading was delivered to the Agent's office for processing.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This dispute involves a situation where a conductor rather than the Assistant Agent Operator signed a Bill of Lading. On August 10, 1962, a work day of the Claimant, (but at a time when he was not on duty) a conductor picked up and signed a Bill of Lading at Ft. Harrison, Indiana.

Petitioner contends that this was a violation of the Agreement, and Carrier should pay for a call under the Scope Rule.

In cases such as this, the clear majority of awards of this Board hold that Petitioner has the burden of proving that the work (in the instant dispute: signing Bills of Lading) was exclusively reserved, system wide, to the telegrapher employees. An examination of this record fails to reveal that such burden was met. The claim must therefore 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 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 was not violated.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty  
Executive Secretary**

Dated at Chicago, Illinois, this 14th day of November, 1968.

**DISSENT TO AWARD 16784, DOCKET TE-14733**

I cannot agree with the opinion of the majority on which denial of the claim was based.

This Board was created by Congress in a manner to insure application of railroad "expertise" in the consideration and decision of disputes. Conceding that the Referee does not possess the peculiar knowledge of the subject matter of this dispute to apply that expertise as Congress intended, the Carrier Members who joined him in adopting this award do have such knowledge, and their failure to apply it constitutes error.

All railroad men know that no group of employees has — or ever has had — an "exclusive" right, "system wide" or otherwise, to sign bills of lading. The incongruous neologism "exclusivity" represents, in my opinion, nothing more than an easy way to avoid the hard work necessary to properly consider and decide "cases such as this" where a basic duty has been transferred to an employee who has never acquired a correlative or traditional right to perform it, as had the claimant.

Awards such as this contribute only to the erosion of rights, the preservation of which the Railway Labor Act was intended to assure. They are, therefore, not erroneous merely, but unlawful as well.

I dissent.

**J. W. Whitehouse  
Labor Member**

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