

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20635
Docket Number CL-20671

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station **Employees**

PARTIES TO DISPUTE: (

(The Atchison, Topeka and Santa Fe Railway Company
(- Coast Lines -

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-7509) that:

(a) Carrier violated the terms of the Agreement between the parties when, at its one-man station at Orange Cove, California it deprived the incumbent claimant, Agent-Telegrapher **J. E. Claiborne** of the work of **way-** billing carload shipment(s) and other work incidental thereto by assigning it to **employees** at other **stations** on June 3, 10, 11, 17 and 24, 1972.

(b) The Carrier shall compensate Claimant **J. E. Claiborne** and/or his successor for one call payment (three hours pro rata) for **June 3, 10, 11, 17 and 24, 1972.**

OPINION OF BOARD: Claimant is the Agent-Telegrapher at a one-man station located at Orange Cove, California. His regular assignment is Monday through Friday, 9:00 A.M. to 6:00 P.M. with Saturdays and Sundays as **rest** days. On each of the claim dates, all rest days of Claimant, Train 3322 picked up cars at Orange Cove. In each instance cars were picked up from customer perishable sheds in the close vicinity of Orange Cove (within a mile and a half), the conductors signed bills of lading, the cars were moved to Bakersfield, California where a clerical **employee** prepared the waybills. The parties agree that for many years the incumbent agent at Orange Cove had performed services in response to calls from shippers, on rest days on either a call or an overtime basis. On October 28, 1971, Carrier inaugurated a **new** procedure by bulletin as follows:

"Station Personnel - Calwa

Waybill boxes (bill of lading boxes) are being placed at all of the shippers' locations on the Visalia Branch. The agencies on that branch will be keeping strict office hours and the shippers have been advised that if they have business after office hours they are to contact our car desk or the Bakersfield car desk for assistance. The shippers are to place their bills of lading in the boxes provided and the conductors are to sign these

"bills of lading, leave the copies belonging to the shipper in the box and taking the shipping order with them to either Bakersfield or **Calwa** for billing.

This will increase our phone business especially on Saturdays and it behooves us to answer these phones promptly and give the shippers all the assistance possible in moving their **commodities**."

The issue in this dispute is not new; the parties have submitted exhaustive and comprehensive briefs and submissions and numerous awards have been cited. We shall not attempt to discuss all the nuances of the arguments in detail and shall confine the opinion to our conclusions and a concise exposition of our reasoning. We note from the submissions that a series of claims are being progressed, all at varying stages, on **this** or related issues.

Carrier first prays that this claim be dismissed on the grounds that a virtually identical issue has been resolved, involving the same parties, in Award 46 of Public Law Board No. 132. It is also noted that Award 46 involves seven one-man agencies including that herein. While we agree with the principle enunciated by Carrier that this Board should not retry issues which have been resolved on a property by prior award of either a Public Law Board or this Board, the principle is not applicable to this case. The dispute in Award 46 of P.L. Board No. 132 involved the inauguration of "piggyback" service at each of the agencies named and relied on Award 16495 for its conclusions. In both the cases above there was no evidence whatever that the work in question was performed at the **one-man** stations in question, and it was in fact performed by truck drivers (in Award 16945) as part of the new "piggyback" operation. The instant case is clearly distinguishable on the facts from the prior case on the property, and for this reason we shall not dismiss the claim.

Petitioner's argument is based principally on the "one-man agency" doctrine and on the work on **unassigned** day rule, which reads as follows:

'ARTICLE III - Section 14 Work on Unassigned Days

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or-unassigned **employee** who will otherwise not have 40 hours of work that week; in all other cases by the regular **employee**."

Carrier's well stated **arguments** may be summarized as follows: 1) the picking up and signing of Bills of Lading by conductors did not violate the Agreement and more significantly was not included **in** the Stat-t of

Claim which is confined only to work assigned "...to employees at other stations"; 2) the Scope Rule of the Agreement is general in type and confers no exclusivity with respect to the work involved in the claim; 3) the preparation of waybills is strictly clerical work, to which the agent has no enforceable right, and which may be performed by clerks at **any** location desired by Carrier; 4) the work on unassigned day rule **re-serves** no work under the **agreement**; 5) Petitioner has not presented evidence to establish that the work in question is reserved to Claimant; 6) the work in question related to shipments picked up at Shippers' perishable sheds and not at the agency and hence was not work done "at the agency" - the "one-man agency" awards are therefore inapplicable; 7) the "one-man agency" principle has been renounced in a number of awards; 8) the work on unassigned day Rule is only applicable when not only is it established that the work at issue is normally performed by Claimant but also other employees do not normally perform the work during their regular work week; 9) Carrier has the right to manage its property in the most economic and efficient manner possible, provided, as herein, that the right has not been contracted away. Carrier has cited a substantial number of Awards in support of its arguments.

Several of the Awards cited by Carrier deserve comment. In Award 12991 there was not a one-man agency, Petitioner failed to establish that Claimant had been called on off-hours, and a clerk handled the work in the absence of the agent at the station, all distinguishable from the instant case. In Award 7078 we said:

"In most of our Awards sustaining ^{claims} on the basis that station work at one man stations outside the Agent's assigned hours belongs to the Agent, there has been some prior practice of calling the Agent to perform the work involved. Here that is not the ^{case} so those Awards are not controlling."

In Award 12147 it ^{was} found that the work at the agency ^{was} interchangeable between clerks and agents. In a closely similar case, Award 12395, the situation must be distinguished from that herein because that dispute ^{was} concerned with new work which when removed did not diminish the traditional work of the agent telegrapher. Admittedly there have been diverging Awards on a number of the issues raised by Carrier. It is our view that the facts of the particular case must be the decisive **determinent**.

We concur with Carrier's argument with respect to the activities of the conductors; the Statement of Claim does not encompass their work in this dispute. We agree that the Scope **Rule** of the Agreement is general and confers no exclusivity; however we do not find that exclusivity is the determining factor in this dispute as will be discussed hereinafter. Although the preparation of waybills is clerical work, it is obviously a part of Claimant's regular work assignment. We also concur in Carrier's observations

that the work in question is not exclusively reserved to Claimant (as that term is generally used) nor does Article III Section 14 *supra* reserve any work. We disagree with Carrier's argument with respect to the work not being accomplished "at the agency"; the sheds in question and the sidings of the various shippers are all within $1\frac{1}{2}$ miles of the station itself and there is no basis for now considering those loci separate from the agency. We also take issue with Carrier with respect to the "one-man agency" doctrine; that principle, first enunciated in 1938 (Award 602) has stood the test of time effectively with only minor deviations (Award 12530); it is well stated, as reiteration in Award 16951, and we do not deny the well established precedence in this dispute.

There is no dispute in this case that Claimant performs the work in question Monday through Friday as part of his normal activity; furthermore, in the past he had been called on his rest days to perform the same work, as required. As there is no evidence in the record that an unassigned **employee** was available for the assignments in question, Claimant should have been called in accordance with Article III Section 14 *supra*. As we said in Award 18998 "...in the circumstances of this case reliance by Carrier on the exclusivity concept is **misplaced**". Also see Awards 19267, 20556 and 14071 among many others.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

AT-EST:


Executive Secretary

Dated at **Chicago**, Illinois, this 7th day of March 1975.