

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—WESTERN LINES**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that the carrier has violated the Telegraphers' Agreement at Quinlan, Fargo, and Mooreland, one-man stations, whereat the carrier has contracted with persons not covered by the agreement, to perform, outside the agents' assigned hours, work covered by the agreement which is regularly assigned to and performed by agents at these points during their assigned hours; and the further claim that as these agents were the only employes covered by the agreement available in the localities, whose duties embrace this kind of work, they be paid retroactively for time not so assigned."

The parties jointly certified to the following Statement of Facts:

JOINT STATEMENT OF FACTS: "On May 10, 1936, at Fargo and Mooreland, and on May 19, 1936, at Quinlan, one-man stations, the carrier contracted with persons not under the jurisdiction of the Telegraphers' Schedule to flag trains for passengers, handle mail, express and baggage, outside of the established hours of the agent, which duties are of the same nature as some of the duties regularly assigned to and performed by the agent during his assigned hours. These persons with whom contracts are made are designated by the carrier as mail, baggage and express handlers. At Quinlan and Mooreland outside parties have been paid \$12 and \$15 per month, respectively, while at Fargo the section foreman has been paid \$15 per month additional compensation for this service."

An agreement bearing date of February 5, 1924, as to rules, and January 1, 1928, as to rates, is in effect between the parties to the dispute.

POSITION OF EMPLOYES: "There is embodied in the Telegraphers' Schedule the following:

SCOPE

This schedule will govern the employment and compensation of
Telegraphers,
Telephone Operators (except Switchboard Operators),
Agent-Telegraphers,
Agent-Telephoners,
Towermen,
Levermen,
Tower and Train Directors,
Block Operators,
Staffmen,

"There is nothing in the Telegraphers' Schedule in effect on this property which gives the classes of employes designated in the 'Scope' the exclusive right to flag trains for passengers, handle mail, express and baggage at this carrier's stations.

"The rate of pay of 78 cents per hour for the agent-telegrapher at Quinlan and 88 cents per hour for the agent-telegrapher at Mooreland, shown in the 'Position of Employes' is not correct. As the result of negotiations by the carrier with the General Chairman, Order of Railroad Telegraphers, the rate of pay for the agent-telegrapher at Quinlan was fixed at 65 cents per hour, effective January 1, 1933, and the rate of pay agreed to for the agent-telegrapher at Mooreland was 69 cents per hour, effective September 1, 1933.

"Awards Nos. 244, 245, and 367 of the National Railroad Adjustment Board, Third Division, cover claims that are not at all similar and in the carrier's opinion have no bearing whatsoever on the case covered by this submission.

"Award No. 217 has to do with Sunday and holiday work and has no bearing on the employment of night trainmeeters. The services performed by the mail, baggage and express handlers at Quinlan, Mooreland, and Fargo, Oklahoma, are at night and outside of the assigned hours of the agent-telegraphers at these points, which makes the case entirely different from that which is covered by Award No. 217 of the National Railroad Adjustment Board, Third Division. The week-day assigned hours of the agent-telegrapher at Quinlan, Mooreland, and Fargo are from 8 A. M. to 5 P. M., with one hour meal period, and Sunday hours from 9 A. M. to 11 A. M. at Quinlan and Mooreland, and 8:30 A. M. to 11:30 A. M. at Fargo. The trains met by these mail, baggage and express handlers, as of May 10, 1936, arrived as follows:

	Quinlan	Mooreland	Fargo
Train No. 1.....	7:41 P. M.	7:57 P. M.	8:40 P. M.
Train No. 10.....	10:05 P. M.	9:49 P. M.	9:10 P. M.

"It is the position of the carrier that the handling of mail, baggage and express at the points named by others than employes covered by the Telegraphers' Schedule and outside of the assigned hours of the agent-telegraphers is not in violation of any rule of the Telegraphers' Schedule in effect on this property."

OPINION OF BOARD: It is the position of the committee that:

"(a) All work appertaining to one-man stations is considered agency work and employes covered by the Scope of the Agreement shall perform such duties.

"(b) Claiming that our contention is well founded, persons designated by the Carrier as 'mail, baggage and express handlers' and paid on a monthly contract basis (\$12 and \$15 per month) are not bona fide employes under the terms of the Telegraphers' Agreement and in permitting and/or requiring them to perform work regularly assigned to the regular bona fide agents, the Carrier has violated Article 2, Paragraph (a).

"(c) Claiming further that since the work is being performed by persons not covered by the Telegraphers' Agreement and which is assigned to and performed by the regular assigned agent during his assigned hours, the agents are entitled to redress in the form of call and overtime payment for each and every instance the contract persons perform agency work. Article 3, Paragraph (c), is the controlling rule.

"The committee further claims that the duties covered by the contract with the telegraphers and named in the Scope of the Schedule Agreement cannot be taken away from the employe who regularly performed such duties during his assigned hours and contract made with other persons who perform the same duties before or after the assigned hours of the scheduled employes."

Carrier contends:

"It is the position of the carrier that the handling of mail, baggage and express at the points named by others than employes covered by the Telegraphers' Schedule and outside of the assigned hours of the agent-telegraphers is not in violation of any rule of the Telegraphers' Schedule in effect on this property."

In further support of their contention, carrier quotes from Interpretation No. 9 to Supplement 13 to General Order No. 27.

The Board cannot agree with the contention of the carrier

"* * * that the handling of mail, baggage, and express at the points named by others than employes covered by the Telegraphers' Schedule and outside of the assigned hours of the agent-telegraphers is not in violation of any rule of the Telegraphers' Schedule in effect on this property."

This contention ignores the fact that the first sentence of the Scope Rule of the Agreement definitely states:

"This schedule will govern the employment and compensation of telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, * * *"

This language fairly construed most certainly prohibits the carrier from removing positions or work from the operation of the Agreement except in the manner therein provided. If the language of the Agreement does not impose this restrictive obligation upon the carrier, then, indeed, the whole Agreement is meaningless and illusory.

Fargo, Mooreland, and Quinlan are one-man stations, and the duties which have been contracted by the carrier to outsiders are the duties which are assigned to and regularly performed by the agent-telegraphers at these stations during their assigned hours and comprise a substantial portion of their duties.

"The Agreement by its terms clearly contemplates that work of the character covered by the Scope Rule of the Agreement shall be performed by employes coming under the Agreement, and at the rates of pay set forth in the Agreement for such work. The elaborate provisions regarding promotions and seniority, which are among the most important provisions in the Agreement, were designed for employes of the sort described in the Agreement, and not for outside persons such as were employed by the carrier in the instant case. The work here performed by persons outside the Agreement was work covered by the Agreement, and since that work should have been performed by employes within the meaning of the Agreement to whom the Agreement could be applied, and since these outside persons were not employes of the sort described, and could not be brought under the Agreement without violating its spirit and without adding language not found in the Agreement, it follows that the employment of those outside persons was in violation of the Telegraphers' Agreement. The employes upon whose behalf claim is made were the only ones available in the localities involved whose duties embraced the particular kind of work.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes 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 action of the carrier in the instant case constituted a violation of the prevailing agreement between the parties.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1938.