

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Wiley W. Mills, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE BALTIMORE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** "Claim of the General Committee of The Order of Railroad Telegraphers on the Baltimore and Ohio Railroad, that the carrier has violated the 'Telegraphers' Agreement at Salem, West Virginia, whereat the carrier has contracted with a person not covered by the Telegraphers' Agreement, to perform, outside the agent's assigned hours, work covered by the agreement which is regularly assigned to and performed by the agent at this point during his assigned hours; and the further claim that the agent was the only employe covered by the agreement available at this station, whose duties embraced this kind of work, he be paid retroactively under the governing rules of the Telegraphers' Agreement for time not so assigned."

**JOINT STATEMENT OF FACTS:** "An agreement bearing date May 16, 1928, as to rates of pay and July 1, 1928, as to rules and working conditions is in effect between the parties to this dispute and the position of agent at Salem, W. Va., is covered by said agreement.

"The regularly assigned hours of duty of the agent are 8:00 A. M. to 5:00 P. M. with one hour for lunch. The agent is also required to attend train No. 11 due at 5:13 P. M. for which service performed after 5:00 P. M. he is paid at the overtime rate.

"Effective December 1, 1936, the carrier contracted for a part time worker at Salem to daily sell tickets and handle baggage and mail for trains No. 22 due 6:29 P. M. and No. 24 due 9:52 P. M., which arrangement released the agent from performing service after serving No. 11 at 5:13 P. M. The part time contract worker is not carried on the payroll of the carrier, but is paid by audit voucher monthly and is not covered by the Telegraphers' Agreement.

"Effective January 25, 1938, a change in train service was made when train No. 22 was taken off, and since that date the part time worker sells tickets and handles baggage and mail only for train No. 24 due at Salem at 7:09 P. M."

**POSITION OF EMPLOYES:** "The Telegraphers' Agreement bearing effective date of May 16, 1928, as to wages, and July 1, 1928, as to rules, governs in this dispute.

"The agent's position at Salem, W. Va., is included in said Agreement. Rate of pay when established for the position was 61¢ per hour. This rate was subsequently increased to 66¢ per hour, effective August 1, 1937.

by Question No. 31 and Answer thereto in Interpretation No. 4 to Supplement No. 13 to General Order No. 27, issued by the United States Railroad Administration, April 30th, 1919, quoted below:

'Question 31. Is there anything in Article VI related to Article III where the agent or operator has been required to report at an early hour and or to remain until a late hour to handle United States mail and parcel post, which would prevent the management making contract for handling the mail or assigning a messenger for that specific service, thereby reducing the elapsed hours of the agent or operator?

'Decision. No.'

"Supplement No. 13 covered the rates of pay, rules and working conditions of telegraphers, telephone operators, agents, etc. on railroads under Federal control.

"This was done at Salem. There was not sufficient clerical and station work at Salem to justify putting on an additional full time employe at that station and a part time worker was employed and a part of the work, which had at one time been performed by clerical employes, was taken off the agent and assigned to this position in accordance with the understanding in effect with the clerks in order to effect a saving and provide better service for patrons. If there had been enough business handled to justify putting on an additional full-time employe, a clerk would have been employed and not an agent.

"The assigned hours of the agent at Salem are now from 8:00 A. M. to 5:00 P. M. daily except Sunday and he makes a small amount overtime each day in meeting train 11 due at Salem at 5:13 P. M. The agent is also paid two calls each Sunday for meeting trains 30, 23, 12 and 11. The part-time worker was assigned to meet trains 22 and 24 daily and meets train 24 only since train 22 was taken off. The part-time worker did not perform work in excess of four hours daily in meeting trains 22 and 24 and performs considerably less work since train 22 was taken off.

"The work taken off the agent at Salem was performed outside of his regular tour of duty and the carrier holds that it has the right to take such work off the agent and assign it to a part-time worker under the Clerks' Agreement.

"The carrier, therefore, requests that this claim be denied.

"The attention of this Board is respectfully directed to Award No. 539, denying the claim of the General Committee of the Order of Railroad Telegraphers on the Texas and Pacific Railway that the agent at Pelican, La., be paid a call for each Sunday and holiday on which the carrier has required persons not covered by the Telegraphers' Agreement to perform work assigned to the agent on week-days."

**OPINION OF BOARD:** The facts and the contentions of the parties are hereinabove set forth. Prior to 1926 the carrier had five employes at Salem, West Virginia. Owing to the decline of traffic and business, three were laid off, leaving the agent and a helper.

On December 1, 1936, the carrier made two agreements with one A. D. Traugh for part-time service—one, to handle and carry United States mail, and the other, to do certain work at the station, including the selling of tickets and the handling of baggage and express for night trains. Mr. Traugh was not on the payroll of the carrier, but was paid by vouchers.

A number of awards of this Division of the Adjustment Board, based on similar facts, have held such attempts to take work away by contract were violations of the Telegraphers' Agreement.

Here there was a violation of the agreement and the claim must be sustained.

**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 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 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 10th day of January, 1940.

#### DISSENT TO AWARD No. 1018, DOCKET TE-989

Here is an award, arbitrary and unsound. It declares, but neither finds nor shows a basis for such declaration, that the Carrier violated one,—the Telegraphers',—of a number of contracts it holds with various crafts of employees, by arranging to have a portion of the station duties at the station involved performed by a person not covered by the Telegraphers' Agreement. This is held by the award in knowledge of the facts of record that such duties are and throughout have been performed at that station by employees covered by another of the agreements of the Carrier,—that with the Clerks. The latter agreement, also in evidence, made specific provision for the limited services of the character here in dispute as is shown by the section quoted therefrom in the Position of the Carrier.

The lack of any adequate or reasonable statement as a basis for the award makes it necessary to find it either in such meager opinion and findings as are given or by implication therein or inference therefrom. Fortunately, the character of the case, as it is shown by the Statement of Facts and in the Positions of the parties, does not require resort to either implication or inference. By its only given reason for the award, which appears in its general reference to unidentified awards of the Division, it can only be concluded that the basis of the award is an assumption that Telegraphers have exclusive right to all station work at this station;—either that or it lacks a basis.

If such exclusive right belongs to the Telegraphers it can exist only because there is a contract to that effect. The rule in the Agreement between the parties covering the positions set forth therein is Article 1 (a) designated "Scope," which reads in full as follows:

"(a) The following rules and rates of pay shall apply to all positions held by telegraphers, telephone operators (except switchboard operators), agents, agent telegraphers, agent telephoners, towermen, levermen, tower and train directors, block operators and staff men specified in the subjoined wage scale, hereinafter referred to as 'Employees.'"

The complete list of positions at Salem in the subjoined wage scale is:

Agent  
Block Operator  
Block Operator  
Block Operator

a total of four.

Thus we have the entire coverage by the provisions of the agreement to the Telegraphers' positions and work at Salem. By no stretch of imagination can this rule be comprehended to grant to the employees listed therein the exclusive right to the work involved in this dispute.

The record in this case as quoted in part in the award shows, however, that prior to 1926 there had existed at Salem, connected with the Agent, four other positions, covering the performance of the same work as here in dispute, which came under the provisions of the Clerks' Agreement. In fact, since 1926 these four other positions had been reduced as of the date of this dispute to one position, Station Helper, which was a position coming under the Clerks' Agreement.

Can aught but arbitrariness be an honest description of a decision which under such known circumstances of record bases upon an assumption of exclusive right to the Telegraphers?

This award not only ignores the circumstances above recited shown by the record to have prevailed prior to the date of the currently effective agreement with the Telegraphers (July 1, 1928), and, with the reduction of but one of the four other positions connected with the Agent, prevailing when this agreement was made effective, but if it were upheld it would vitiate the agreement held by the clerks with this carrier. The Scope rule of this Clerks' Agreement is more specific than that of the Telegraphers', and includes a term, Rule 1 (c), and a Memorandum of the Understanding relating to it, heretofore quoted in the Position of Carrier which expressly provides for part time work by stated limitations within which the particular part time work here in dispute falls.

Provisions of this other agreement with the Clerks may not with impunity be summarily dealt with as is done by this award. Had there been a violation by reason of the use of the part time worker here involved such violation could have been, under proper construction of contracts, of the Clerks' Agreement only.

Yet there is here an award by indefinite reference to other unidentified awards of this Division, "based on similar facts," as the Opinion states, holding that the action here in dispute is a violation of the Telegraphers' Agreement.

The members of this Division here dissenting, with intimate knowledge of all the awards of the Division and in particular recollection of any that have similarity in any respects, challenge the statement that:

"A number of awards of this Division of the Adjustment Board, based on similar facts, have held such attempts to take work away by contract were violations of the Telegraphers' Agreement."

We in fact challenge anyone to show a single award holding it to be a violation of the Telegraphers' Agreement to take work away by contract where there were recorded facts such as are above recited and are a matter of record, particularly as to the continued existence of a position under another agreement at the station or location in dispute prior to, during, and subsequent to the effective date of the Telegraphers' Agreement.

Can anything more accurate than unsoundness be attributed to an award which overrides all of these known elements of record essential to wise consideration of the dispute, and at the same time so loosely and inaccurately

relates the facts to former awards of the Division, which relation it is not possible to substantiate?

That the exclusive right to station work at any station is not existent in this Telegraphers' Agreement is peculiarly evident by the facts in this case which illustrate it: Here an employe under another, the Clerks' Agreement, performs such station work day in and day out in full unquestioned compliance with that other agreement, and he and others have done so continuously since prior to the date of the agreement with the Telegraphers here held to be violated.

It would be unnecessary to show further that such exclusive right was neither expressed by, nor inherent in, the scope of the Telegraphers' Agreement except for that one limited statement in the Opinion approaching a reason for the award which refers to the number of awards (without identification of a single one) which is advanced as support for this award. Such a reference of generality, identifying not a single award and ignoring the circumstances which differently appear in each of any such awards and the differences in the terms of the contracts held respectively by the Telegraphers and the Clerks on the Carrier here involved and those which may or may not have been included in the agreements involved in these unidentified awards, is worthless.

Had the inquiry into preceding awards been extended sufficiently to include pertinent decisions based on circumstances, agreements, and arguments of close analogy, it would have encompassed one award (Award 615, Docket CL-550) in which there was given thorough examination and analysis of the principles involved, followed by comprehensive and soundly reasoned conclusions relating directly to the respective rights of Telegraphers and Clerks under their respective agreements to such duties as are here involved. Had this Opinion evidenced a searching and painstaking analysis in its references to awards of this Division there might have been found grounds for determining on what basis and for what reason this decision was reached. The decision in Award 615 itself confounds the simple award in this dispute. Adequate reasons why this award was made not being expressed, it of course is impossible to show by comparison with the principles laid down in Award 615 why it does so. That Award 615 does confound and destroy the worth of this award will be apparent to any impartial reviewer who will analyze the record in each case.

The complete disregard of the circumstances associated with the negotiation of the two Agreements, the Telegraphers' and the Clerks', placed before the Referee in this case, and of the facts as to employes coming under each of those agreements continuing in employment at the station here involved; the inaccurate relation of the essential facts to other awards of the Division which formed the only stated reason for this award; the attribution of exclusiveness of right to all work of the kind here involved to the craft holding but one of the agreements with the Carrier, the Telegraphers', which agreement had no provision which in any way indicated sole right to such work; and the failure to measure logically and accurately the principles involved by the principles of clear, sound and just expression of other awards, notably Award 615, Docket CL-550, which wholly repudiates the assumption of the single right of any one craft of the two here whose rights were under review, to the work involved; these all make this award one that cannot be credited with the qualities of wisdom and justice, and one that, under thorough review of the subject upon which it passed and by reasonable and logical application of the prevailing contracts thereto, cannot be other than regarded as worthless.

/s/ R. F. Ray  
/s/ C. P. Dugan  
/s/ A. H. Jones  
/s/ R. H. Allison  
/s/ C. C. Cook