

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

I. L. Sharfman, 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 Anna, Ohio, a one man station, whereat the Carrier contracted with a party not covered by the Telegraphers' Agreement to perform, during the meal hour period assigned the Agent-Operator at that point, work covered by the agreement which was regularly assigned to and performed by the Agent-Operator at that point prior to April 24, (Sunday) 1938, and the further claim that the Agent-Operator assigned to this position during the period April 25, 1938, to September 24, 1938, both inclusive, be paid for one hour at overtime rate for each noon hour he was not assigned to perform the work at this station which rightfully belonged to him, but was performed by this outside party under contract."

JOINT STATEMENT OF FACTS: "An agreement bearing effective date of May 16, 1928 as to wages and July 1, 1928 as to rules and working conditions exists between the parties to this dispute. A position classified as Agent-Operator at Anna, Ohio, a one man station, is included in said agreement, assigned hours 8:00 A. M. to 5:00 P. M., daily except Sunday, including one hour for meals.

"Prior to April 24, 1938, Mr. D. L. Murphy, Agent-Operator at Anna, Ohio, was required to work during the noon meal hour period each day except Sunday and allowed pay for this service at the rate of time and one-half, in accordance with the provisions of Article 10, Paragraphs (f) and (h), of the Telegraphers' Agreement. This service was necessary due to Trains 55 and 56 being due at Anna during the period specified in the Agreement for meal hour.

"Effective April 24, 1938, an outside party was engaged under contract, who, in addition to protecting the public highway crossing during noon hour, worked Train 56 whenever the train stopped at that point for the purpose of handling passengers, baggage or express. This point is a flag stop and when no passengers, contractor flags train for United States Mail, all of which work was formerly handled by the Agent-Operator.

"For period April 25, 1938, to September 24, 1938, 123 meal hours were claimed by Agent-Operator Murphy."

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. For your ready reference, we are submitting herewith a redraft of Article 10 of said agreement as Employees' Exhibit A.

early hour and or to remain until a later 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.'

"Hundreds of contracts as referred to in the above question, have been made by this carrier with outside parties over a period of many years, both prior and subsequent to the promulgation of Supplement No. 13 to General Order 27, without any question being raised by the representatives of the Telegraphers' Organization that such contracts were in violation of the Telegraphers' Agreement, although the work may have been performed by the agent or agent-operator at a station before the contractor was employed, or the same class of work by the agent or agent-operator at some other stations where this work was assigned to such employees as a part of their regular duties.

"We submit there was no violation of the Telegraphers' Agreement in contracting with an outside party to perform some of the minor duties of the agent-operator at Anna during his established meal hour period in order that he could be relieved as prescribed in Paragraph (f) of Article 10 of the Agreement, and there is no basis found in the agreement to support the claim for meal hours not worked by the agent-operator who performed no service for the pay claimed.

"The carrier therefore respectfully requests that the claim be denied."

OPINION OF BOARD: It has been repeatedly held by this Board that work embraced by the scope rule of an agreement may not properly be removed from such agreement and assigned to employees not subject to its terms. There can be no question that the work here involved fell within the scope of the Telegraphers' Agreement, and in point of fact it had been performed by the agent-operator at this one-man station for many years during the meal-hour period and had been paid for at the overtime rate under the appropriate rules of the Agreement. The evidence of record discloses no adequate grounds for the departure from this practice during the period extending from April 25, 1938 to September 24, 1938, both inclusive, for which reparation is here sought. Under these circumstances the claim as submitted must be held to be a valid one.

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 employe involved in this dispute are respectively carrier and employe 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 evidence of record discloses a violation of the Agreement and supports the claim for reparation as submitted.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of June, 1940.