

Award No. 3931

Docket No. TE-3277

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

James M. Douglas, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY (JOSEPH B. FLEMING AND AARON COLNON, TRUSTEES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Chicago, Rock Island & Pacific Railway:

(1) That the Carrier violated and continues to violate the Telegraphers' agreement, when, on the dates specified in the submission, without conference and agreement, the Carrier unilaterally removed from the employes covered by said agreement and from said agreement at Hennessey, Pond Creek, and Okarche, Oklahoma, Conway and Jericho, Texas, Mansfield, Arkansas, White-water and Canton, Kansas, and Libertyville, Iowa, the duties of loading, unloading and handling mail, freight, baggage and express to and from trains and between station buildings and trains which arrive and depart at said stations outside of the regular assigned hours of the agents at these one-man stations, a part of whose duties it had been to perform this work, and

(2) That the Carrier improperly transferred to train crews and to other employes or contractors variously classified by the Carrier as custodians, caretakers, train meeters, etc., not under the telegraphers' agreement, these duties which are covered by said telegraphers' agreement and which had been performed by employes under said agreement, and

(3) That the duties and work here involved shall be restored to the telegraphers' agreement and to employes under said agreement, and

(4) That the agents at these one-man stations named herein be compensated under the call and/or overtime rules of the telegraphers' agreement for each occasion on which employes not under the telegraphers' agreement have performed the aforesaid duties and work at these stations since the date the claims were filed by or in behalf of these agents who have thus been deprived of doing this part of their work.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of January 1, 1928, as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

The agencies named in the Statement of Claim are covered by said agreement, and each of them are one-man stations.

On Sundays, holidays and outside of the assigned week-day working hours of the agents at the one-man stations named in the Statement of Claim, and when or where the agents are not on duty, train crews are required,

date of the attached agreements marked Carrier's Exhibits "C" and "D", this service was to the extent and in the manner shown in those agreements, allocated to the employees represented by the Clerks' Organization and Train Service Organizations.

On the basis of the above evidence, we respectfully petition your Board to deny the employees' claim.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves nine one-man stations. Petitioner contends that at these stations Carrier contracted with outsiders or used employees not under the Telegraphers' Agreement to load and unload mail, express and baggage during the hours the respective Agents were not regularly on duty.

Prior to 1936 Carrier used the agents at the one-man stations to perform such work outside their assigned hours on a call or overtime basis. Then it contracted with a drayman or custodian to perform the work outside the Agent's assigned hours. Petitioner complained of such removal of work from under its Agreement. It filed a claim protesting such action by Carrier at one of the same stations involved in the instant claim, namely Hennessey, Oklahoma. Under Award No. 535 this Board held that such conduct by Carrier was improper and sustained the claim.

The Board has consistently ruled against assigning such work outside the Agent's regular hours to outsiders, train crews or others. See Awards Nos. 602, 529, 535, 1274, 2155 and 2415.

The record shows that Carrier now assigns such work to custodians at Hennessey, Pond Creek and Okarche, Oklahoma; Conway, Texas; and Libertyville, Iowa. At the other stations set out in the claim train crews now perform such work except at Mansfield, Arkansas, where a second trick telegrapher's position was re-established on October 2, 1942. It is clearly improper to assign such work to train crews and an agreement to pay train crews for such work does not validate such practice.

Under the previous awards it is clear that this claim should be sustained. However, Carrier has placed in the record evidence of a supplemental agreement dated March 27, 1944 with the Clerks' Organization providing for the establishment at small points of station attendant positions to care for station buildings and to handle mail, baggage and express. This agreement is carried over into the current Agreement between Carrier and the Clerks, effective August 2, 1945.

We have here a somewhat unique situation in that station work has ordinarily been performed by employees under both the Telegraphers' and Clerks' Agreements. Such work is done by an agent under the Telegraphers' Agreement at one-man stations, and by station employees under the Clerk's Agreement at other stations.

But that does not mean an Agent is entitled to every bit of the station work regardless of amount. It is our opinion that Carrier is authorized to assign to bona fide employees under the Clerk's Agreement such extra work as occurs at one-man stations beyond the Agent's normal tour of duty.

Carrier states in its Reply to Employees' Oral Argument dated August 7, 1946, and filed in the record, at the stations listed above where the work in question was being done by a custodian that now such work is being performed by Station Attendants fully covered by the Clerks' Agreement. There is no other evidence of record that such is the case. However, this statement does not appear to be disputed by Petitioner.

Accordingly, as to those stations, viz: Hennessey, Pond Creek, and Okarche, Oklahoma; Conway, Texas; and Libertyville, Iowa, the claim should be sustained up to August 7, 1946. As to the other stations 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 Carrier has violated the Agreement as set out in the opinion.

AWARD

Claim sustained in accordance with opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of June, 1948.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 3931

Docket No. TE-32777

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: Chicago, Rock Island & Pacific Railroad Company.

Upon application of the representatives of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3 First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The Order of Railroad Telegraphers requests an interpretation of Award No. 3931, dated June 10, 1948, on the ground Carrier has not satisfied in full the requirements of the Award arising out of Carrier's violation of the Agreement. Carrier has made some payments in compliance with the Award. However, Employees claim that under the terms of the Award Carrier still must pay claimants not less than one call for each assigned working day during the period involved.

The claim upon which the Award was made is stated in four counts. For the purpose of this interpretation, we will summarize the claim.

Count (1) states that at nine one-man stations Carrier removed from the agreement and gave to others not under the agreement "the duties of loading, unloading and handling mail, freight, baggage and express" outside of the regular assigned hours of the agents at these one-man stations.

Count (4) asks that the agents at these stations be compensated for each occasion "on which employees not under the telegraphers' agreement have performed the aforesaid duties and work."

For the proper understanding of the meaning and effect of an Opinion and Award, they must be read in the light of these elements: 1. The claim as stated; 2. The facts presented by the record in support of and in opposition to the claim; 3. The issues and contentions raised by the parties under such facts.

The issues before the Board in this claim turned on the handling of "mail, freight, baggage and express" collectively and not as individual or specific items. The handling of mail alone, by itself, and not in connection with the handling of freight, baggage and express, was in effect withdrawn from consideration by the parties themselves, and the Award must be read in the light of this fact.

Carrier, in its submission, took the position that the handling of mail alone was not work which came exclusively within the scope of the Telegraphers' Agreement. Carrier referred to proceedings before the United States Labor Board in which the Organization petitioned the Labor Board

to be relieved from the duty of handling U. S. Mail. Carrier contended that since the Organization asked to be relieved of this type of work, that such request was an admission the Telegraphers had no exclusive right to such work nor did it desire to acquire such right.

Employees, in their argument contained in the record, answered the Carrier as to the handling of mail only as follows: "The Carrier, at page 6 of its Submission, cites the decision to Question No. 31 of Interpretation No. 4 to Supplement No. 13 to General Order No. 27 by the United States Railroad Administration which provided that the management of a railroad was not prevented from making a contract for, or assigning to a messenger, the specific service of handling United States mail and parcel post. Attention is called to the fact that the specific service of handling the mail and parcel post **only** was involved. We are not concerned where the specific service of handling the mail only is involved at stations, but where the handling of mail is combined with other actual agent's work it becomes a part of the general work of the agent as in Awards 2418, 2419 and 2420."

Thus, the parties themselves removed from consideration the issue of the service of handling mail only.

However, Employees, in their request for this interpretation, support their claim for not less than one call per day on the ground that "U. S. Mail was loaded and/or unloaded at least once on or from one passenger daily in every case, and in some instances twice daily".

In view of their admission in the record, the Award can not be held to support a claim for the handling of mail only. Thus Employees are not entitled to the relief they request in this Interpretation of not less than one call per day because of handling mail only.

Referee James M. Douglas, who sat with the Division as a member when Award No. 3931 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of July, 1952.

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THIRD DIVISION

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