

Award No. 4392

Docket No. TE-4451

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO & SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado and Southern Railway Company; that,

(1) the Carrier violated and continues to violate the terms of the current Telegraphers' Agreement when on July 7, 1948, and subsequently thereafter it permitted and continued to permit and/or require employes not covered by the Telegraphers' Agreement to perform the duties of loading and unloading mail, baggage and express, including milk and cream, between the station building and trains at Grenville, N. Mex.; and,

(2) that the senior idle employe shall be compensated for a day's pay on the basis of the minimum rate of pay for telegraphers on the district, for each day on which employes not covered by the Telegraphers' Agreement have been permitted and/or required to handle mail, baggage and express, including milk and cream, between the station building and trains at Grenville, N. Mex., commencing July 7, 1948 and continuing thereafter so long as these violations have or may occur; and,

(3) if the Carrier elects to continue this practice, the work of loading and unloading mail, baggage and express, including milk and cream, between the station building and trains at Grenville, N. Mex., shall be assigned to and performed by employes covered by the Telegraphers' Agreement under the governing rules of such agreement.

EMPLOYES' STATEMENT OF FACTS: This case was progressed under the agreement bearing effective date of June 16, 1924 between the parties to this dispute; Grenville Agent-Telegrapher position will be found at Page 19 thereof. A copy of that agreement is on file with the National Railroad Adjustment Board. The agreement has since been revised effective as of October 1, 1948.

Grenville station is located on the main line of the Colorado and Southern Railway between Trinidad, Colorado and Clayton, New Mexico where a farming dairy and stock raising community is served by the railroad.

Prior to March 27, 1942 an Agent-Telegrapher was employed at Grenville who handled the mail, baggage and express, including milk and cream, from and to the station building and trains at that station.

Effective on or about July 7, 1948, the Carrier began requiring train service employes to handle these same commodities, as formerly handled by the Agent-Telegrapher, to and from the station building and train at Grenville.

give this class of employes the exclusive right to any and all work which they may have performed at some previous period. This contention is supported by the language of Rule 26(a) of the current agreement, which reads as follows:

“Employes covered by this agreement will, when necessary, assist in handling station work.” (Emphasis supplied)

We submit that there is no rule, interpretation, custom, practice or sound reason which supports the employes' claim in this case. It should be denied.

OPINION OF BOARD: On March 27, 1942, the Agent's position at Grenville, New Mexico, was discontinued. A custodian was then employed at this station. A dispute arose in connection with the assignment of the custodian which was carried to this Division and resulted in Award 3658. In that dispute, the Organization contended that the Agent's position was not in fact abolished and that the Agent should be returned to his position. The matter of the restoration of the Agent's position was remanded to the parties for further handling. No settlement being effected, the Carrier applied to the State Corporation Commission for an order permitting the discontinuance of the custodian's position and the closing of the station. On June 24, 1948, the application was granted and on July 6, 1948, the station was closed.

Grenville is a village of 128 people. Its business enterprises consist of a general store, a feed store, hotel and two filling stations. One bus line and several truck lines handle most of the freight and passenger business to and from the village.

The Carrier operates two passenger trains through Grenville each day, one in each direction. Northbound train No. 8 is met by the Grenville postmaster who receives direct from the railway mail clerk any mail destined for Grenville and, also, he delivers to the railway mail clerk the outgoing mail. There is very little baggage or express handled at Grenville. There is, however, a small amount of milk and cream shipped on train No. 8. The milk and cream is loaded on a station truck by the shipper. This truck is spotted where the baggage car usually stops and the trainmen load the milk and cream from the station truck to the baggage car. These operations do not take more than two minutes. Southbound train No. 7 is not met by the postmaster as it arrives at an early hour in the morning. A mail storage box has been provided and a trainman exchanges the outgoing and incoming mail, the operation requiring about two minutes. The empty milk cans are returned on train No. 7 and are thrown to the station platform by the express-baggage man on that train. The empty milk cans which have not been called for by the shippers are at a later time placed in the freight room by a section man. These operations admittedly take only a few minutes' time. It is the contention of the Organization that the work described belongs to the telegraphers and it demands money loss to the senior idle employe and the assignment of the work to an employe under the Telegraphers' Agreement if such work is to be continued.

This Division has decided many times that station work in one-man stations belongs to the Agent, a position under the Telegraphers' Agreement. It has also been decided that station work required to be performed outside of the assigned hours of the Agent at a one-man station is work which belongs to the Agent. With these principles, we are in complete accord.

The facts in the case before us inject questions for determination which are outside of the controlling effect of those conceded principles. Here we have no Agent or other telegrapher at Grenville. In fact, there is no station employe at all. The work being performed could well be incidental to and properly the work of employes under Agreements with other crafts. No part of the work being performed is exclusively the work of a telegrapher, although it could be required of a telegrapher if one was assigned to the station. All employes' positions have been discontinued

and the station closed by proper government order. Certainly the Carrier is not required to maintain any station employe at this point nor can the Organization compel any such action. On the other hand, the Telegraphers' Organization is a party to an Agreement with this Carrier which entitled the employe within its provisions to all of the telegraphers' work. What then is the effect of such an Agreement as to a situation such as we have before us?

The claim of the Telegraphers' Organization to this work arises out of the fact that it formerly belonged to the Agent assigned to this one-man station. As such Agent, the work was properly assigned to him. No part of the work here in question could be said to belong to a telegrapher because of the inherent nature of the work. Where, therefore, a competent authority authorized the discontinuance of all station positions and a closing of the station, the work herein performed, out of which this dispute arises, cannot be properly classified as telegraphers' work exclusively. Unless it could be so classified, we fail to see any basis by which the senior furloughed or extra telegrapher not working could maintain a claim for wage loss. With all station positions properly abolished and no work remaining belonging exclusively to telegraphers, the only basis for a claim that the work belonged to telegraphers is gone. Our holding is here limited to a finding that the Telegraphers' Organization has not established its right to this work under the circumstances shown. Whether the work could be properly performed by trainmen, an express messenger-baggage man or by an employe of some other craft, by the terms of their respective Agreements or by established practice, is not here considered or decided.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the carrier and 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

No basis for an affirmative award exists.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1949.