Award No. 4715
Docket No. TE-4419

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD CO.
(Buffalo and East)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East:

(A) the Carrier violated Rule 1 (Scope Rule) of the Telegraphers' Agreement when it required or permitted an outsider (caretaker) to perform duties covered by the Telegraphers' Agreement at Fairport, New York, Passenger Station, September 8, 1947, to August 10, 1948, inclusive.

(B) the Carrier shall now be required to pay the person or persons working the caretaker position between September 8, 1947, and August 10, 1948, inclusive, at the rate prescribed by Rule 20 of the Agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of January 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

At Fairport, New York, on the Syracuse Division, there is a passenger station located alongside the four main line tracks on that division, where passenger, express and baggage trains stop as schedule.

Sometime prior to July 1, 1927, a position classified as ticket agent under the Telegraphers' Agreement was operative at Fairport, New York. Effective, July 1, 1927, said ticket agency position was declared abolished and a so-called caretaker was installed. It was the assumption of the Organization that the said position had in fact been abolished and the work incident thereto had been entirely discontinued. The Organization later learned that this position had not been abolished in fact but that the so-called caretaker had been required to act as ticket agent for the Carrier in addition to acting as agent for the Railway Express Agency.

The Organization learned of the next above arrangement on or about September 8, 1947, and immediately requested the Carrier to advertise a ticket agent position in accordance with the provisions of Rules 20 and 27 (a) of the Telegraphers' Agreement, and further, requested that pending the filling of such position in the manner prescribed, the incumbent of the position (a so-called "caretaker" and Railway Express Agent) be paid the rate prescribed by Rule 20, retroactively to September 8, 1947.

The Carrier holds that if there had been any justification for establishing a position to take over the duties performed by McNulty for the Railroad Company, the Committee would have progressed that feature when McNulty's seniority rights were under consideration.

CONCLUSION: The Carrier has shown that—

1. The Employes are contending that a new position should now be established, rated, bulletined and assigned in accordance with the rules of the Telegraphers' Agreement to take over certain duties which the Express Agent at Fairport has performed for the Railroad Company for more than 40 years.

2. Those certain duties are not telegraphers' exclusive work.

3. Prior to the present General Chairman's request of September 8, 1947 and over a period of 40 years, no request, protest or claim was presented by the Employes with respect to the duties performed by the Express Agent for the Railroad Company.

4. Former representatives of the Telegraphers' Organization were familiar with the duties performed by the Express Agent for the Railroad Company when they originated request for removal of the name of an employe from the seniority roster following his appointment to the position, and this action demonstrates the unsoundness of the claim now presented.

The claim of the Employes is, therefore, without merit and should be denied.

OPINION OF BOARD: For a number of years prior to September 8, 1947, Claimant performed services for the Carrier at Fairport, New York, nominally as a caretaker. For these services he was paid $29.80 per month by Carrier. Claimant was also the Railway Express Agent at that point. It is claimed by the Organization that Claimant actually performed duties coming within the scope of the Telegraphers' Agreement and claim has been filed as indicated.

There is a great deal of history behind this situation at Fairport. The salient features of the historical background in so far as this claim is concerned appear to be as follows: The March 1909 and April 1910 Agreements between the Carrier and the Telegraphers' Committee listed a position of "Ticket Agent" at Fairport in the wage scales. Subsequent Agreements at least beginning with 1916 did not list such a position in the wage scales. It is not clear from the record exactly when this position of "caretaker" was established at Fairport. In any event in 1927 the then General Chairman requested that Claimant W. A. McNulty, who was then occupying the "caretaker" position, be dropped from the seniority list inasmuch as he was covering a position not shown in the wage scale. This was done. Claimant filed an appeal from such action and after conference with the General and Local Chairmen the action was re-affirmed on March 16, 1930. On September 8, 1947, the General Chairman requested a restoration of this position to the Telegraphers' schedule asserting that Claimant was performing work under the jurisdiction of the Telegraphers' Agreement in that he was performing all the operations of a regular ticket agent by selling tickets, making out reports and performing work of a joint agent through the Railway Express Agency. December 10, 1947, the Superintendent ordered that sale of passenger tickets at Fairport be discontinued and such sale was actually discontinued January 1, 1948. Because of the regulations of the New York Public Service Commission Carrier was required to rescind this action and the sale of tickets was resumed April 1, 1948, after the Public Service Commission authorized the discontinuance of the service.

The Carrier points to the long history of acquiescence and the action of the General Chairman in 1930 as indicative of the Organization's concurrence in its (Carrier's) contention that the work performed by the so-called caretaker at Fairport was not within the scope of the Telegraphers' Agreement. It

also contends that the sale of passenger tickets is not exclusively Telegrapher's work. On these premises, therefore, it argues that the claim should be denied.

The record reveals that Carrier for its own payroll purposes carried the Claimant under the title of "ticket agent". Further it indicates that at the hearing before the Public Service Commission Carrier representative testified that Claimant acts as ticket agent, issue tickets, gives information to the public as to trains, quotes fares, schedules, issues tickets to cover transportation, handles checked baggage. The instant Agreement in the wage scales carries the position of Ticket Agent at other points on Carrier's System. If Carrier admits as indicated above that Claimant acts as ticket agent, it seems unreasonable to deny that the work he was performing was not within the scope of the Agreement when the work of ticket agents at other places is clearly within the scope. Conceding that Carrier is correct in its contention that the sale of tickets is not exclusively Telegrapher's work, the fact is that there are other items of work involved herein. These factors, in addition to other facts of record, in our opinion justify the conclusion that Claimant was performing work properly within the Scope of the Telegraphers' Agreement.

With respect to the acquiescence of the Organization in the situation at Fairport, it is true that where an agreement is ambiguous such acquiescence would be compelling evidence of the intent of the parties, and as a matter of fact, it has not been passed over lightly here. However, as pointed out above, the other facts of record point overwhelmingly to the conclusion we reached above. As to the removal of the position from the seniority roster as reaffirmed in 1930, we cannot tell what motivated the General Chairman in that action. The record is not too clear as to whether or not conditions were the same then as when the Organization protested to the Carrier in September of 1947. There is no doubt that the two factors immediately above mentioned would be sufficient to bar a claim for compensation for any period prior to the date of protest. Here, however, the claim does not ask for that. It follows that a sustaining award is in order.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of February, 1950.