

Award No. 5237
Docket No. TE-5178

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Robert O. Boyd, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD, BUFFALO AND EAST

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

(a) The Carrier violated and continues to violate the terms of the Telegraphers' Agreement at Seneca Falls, New York, when acting alone it removed the work of meeting trains and handling United States mail each Saturday, Sunday and holiday, commencing September 1, 1949, from the ticket clerk-telegrapher who performs this work on the other days in the week, and required or permitted outside employes to perform same; and

(b) the Carrier shall now be required to restore this work to the ticket clerk-telegrapher each Saturday, Sunday and holiday; and

(c) the senior idle extra employe on the Rochester Division be paid a day's pay of eight (8) hours each Saturday and Sunday. In the absence of an idle extra employe on these days, the incumbent of the ticket clerk-telegrapher position be paid a day's pay of eight (8) hours at the rate of time and one-half in addition to the holiday work to which entitled.

EMPLOYES' STATEMENT OF FACTS: An agreement effective July 1, 1948, amended September 1, 1949, is in evidence hereinafter referred to as the Telegraphers' Agreement, copies thereof are on file with the National Railroad Adjustment Board.

Seneca Falls, New York, is located on the Auburn Road of the Rochester Division. Two positions covered by the provisions of the Telegraphers' Agreement are on duty at this station consisting of:

Agent	Hours
Ticket Clerk-Telegrapher	6:20 A. M. to 2:20 P. M. " 2:20 P. M. to 10:20 P. M.

Prior to September 1, 1949, the position of ticket clerk-telegrapher worked seven days a week being necessary to the continuous operation of the railroad. Part of the regularly assigned duties of the incumbent of this position were to meet all trains and handle all United States mail daily during the assigned hours of the position.

Commencing September 1, 1949, the ticket clerk-telegrapher was assigned Saturday and Sunday as rest days. On this date the Carrier acting alone, ordered Seneca Falls station closed each Saturday, Sunday and holi-

except as it might be for carrying to the postoffice such mail as had been left the night before.

Considering these conditions the Board submits that, while the handling of mail from a box at the station to the postoffice may have been a part of the Agent's duties, when performed in connection with or incident to other work done in and about the station on Sundays or holidays, the taking away of all other work and duties from this station as was done by the Carrier on Sundays and holidays leaving only the mail that had been deposited in a receptacle by the crew of Train No. 26 on the night previous, and which was subsequently taken therefrom by an officer authorized to handle mail and carried by him to the final point of distribution, could not be considered or interpreted as a violation of the scope or other rules of the agreement between the parties."

CONCLUSION

The evidence herein presented conclusively shows that the handling of U. S. Mail is not work that belongs exclusively to telegraph service employees and may be performed by U. S. mail messenger during the hours a passenger station is closed, subject to United States Postal Laws and Regulations, without violating any of the rules of the Telegraphers' Agreement.

The claim of the Employees must, therefore, be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 1, 1949, the Clerk-Telegrapher at Seneca Falls, New York, during his tour of duty, 2:20 P. M. to 10:20 P. M., seven days a week, among his other duties handled the U. S. mail on and off trains arriving and departing at this station. Effective September 1, the Seneca Falls station was closed on Saturdays, Sundays and holidays and the work of handling the mail on and off trains was taken over by the Post Office Department. Paragraph 92.43 of the Postal Laws and Regulations (1948) provides, in part, that "where mail trains arrive at times where there is no railroad representative on duty, the railroad company shall not be required to place the mails on or take them from trains, * * *". The Carrier had notified the Post Office Department that the station would be closed on Saturdays, Sundays and holidays after September 1, 1949, and the Postal Department made its own arrangement for handling the mail at the trains.

Work that is necessary for the Carrier to perform in the discharge of its duty as a common carrier or any work which it has responsibility to perform belongs to the class of employees who have contracted for it; and if the work is within the scope of its Agreement, the Carrier cannot contract with others for its performance. But here, under the terms of the Postal Regulations, there was no duty or responsibility of the Carrier to handle mail when its station was closed, except that the Post Office Department reserved a right to require the Carrier to perform the work. But the record does not show that this privilege of the Department has been exercised. The situation at Seneca Falls after September 1 on Saturdays, Sundays and holidays, when the station was closed, was as though no work whatever remained to be done.

This problem was fully discussed in Award 5165 where the same issue was presented. We think that such previous determination by the Board is controlling here.

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 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

The facts of record and the Agreement do not support the claim.

AWARD

Claims (a), (b) and (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of February, 1951.