

Award No. 5877
Docket No. TE-5838

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that:

1. The Carrier violated the terms of the agreement between the parties when on April 24, 1949, it permitted or required the crew of train No. 5 to perform the duties of handling U. S. mail between the train and warehouse; the train crew on Extra 5048 West to unload, check and place L.C.L. merchandise in the freight house, and the signal maintainer to accept, receipt for, and take possession of registered package containing pay vouchers consigned to the agent, at Animas, New Mexico.

2. As a result of this violation the agent-telegrapher at Animas, New Mexico, shall be compensated under the appropriate rules of the Telegraphers' Agreement, on a call basis for April 24, 1949, and on subsequent dates thereafter on which employes not covered by said agreement have performed these duties.

EMPLOYES' STATEMENT OF FACTS: 1. There is in evidence an agreement between the carrier and its employes represented by the petitioner bearing an effective date of December 1, 1944 (and reprinted March 1, 1951, including revisions), which agreement (hereinafter referred to as the current agreement), was in effect on the dates involved in the instant claim. A copy of the current agreement is on file with this Board and is hereby made a part of this dispute.

2. The carrier maintains an agent-telegrapher position at Animas, New Mexico, a station located at Mile Post 1175.9 on its Rio Grande Division. Animas is a one-man station. Prior to September 1, 1949, the hours of assignment of the agent-telegrapher were 9:00 A. M. to 12:00 Noon, 1:00 P. M. to 6:00 P. M., daily except Sundays and holidays, Sunday being the assigned rest day. Subsequent to September 1, 1949, the assignment was changed from six to five days per week, Monday through Friday, rest days Saturday and Sunday, hours of assignment remaining the same. The position is not assigned to work holidays. The rate of pay of the agent-telegrapher position at Animas on the date of the instant claim was \$1.6075 per hour, with subsequent increase effective February 1, 1951 to basic rate of \$1.7325 per hour.

OPINION OF BOARD: The claim in the form presented refers to two violations of the controlling Agreement on a particular date. Penalty is asked for the alleged violations on this date and for similar violations on later dates.

The claim is by the Organization on behalf of Leader Posey, Agent-Telegrapher at Animas, New Mexico. The station is a one-man Agent-Telegrapher station. The assignment after September 1, 1949 was daily 9:00 A. M. to 12 Noon and 1:00 P. M. to 6:00 P. M. daily except Saturday, Sunday, and holidays. At this location there was no relief and when there was work outside of the assigned hours the position entitled to it was on a call basis.

One of the instances of claimed violations is that on the day named when the Agent-Telegrapher was off duty a package containing pay roll vouchers came by train to the station addressed to the Agent, baggage room, which was by someone delivered to the Signal Maintainer who receipted for and took possession of it. The contention made is that the Agent-Telegrapher should have been called to receive it from the train.

This package was of registered mail and it is assumed that it retained its character as such until it was delivered to and receipted for by the Signal Maintainer. It appears reasonable to say therefore, in the absence of evidence that the Carrier directed delivery in this manner, that the Carrier could not be held accountable therefor to the Agent-Telegrapher. There is no evidence that any one on behalf of the Carrier directed that the package should be removed from the United States Mails and delivered to someone other than the addressee. Whatever infraction there was, if any, was not of the Agreement between the Carrier and the Organization.

The next phase of the claim relates to other instances of handling of U. S. Mail similar to this one and the general handling of Mail outside the hours of service of the Agent-Telegrapher. The claim as originally made presents only the question of handling Mail between the train and warehouse by train crews. In addition, in its submission the Organization has presented as violations handling of Mail by the Postmaster directly to and from trains and handling by him from facilities provided by the Carrier for deposit of Mail by train crews.

The handling of U. S. Mail comes under the control of the Post Office Department of the U. S. Government and as such cannot be claimed by any railroad Organization. It may under certain conditions become a part of the work of an Organization.

Under Post Office Department regulations it is the primary duty of Mail Messengers to receive from and deliver Mail to post offices and Mail cars. In case of inaccessibility of Mail cars it will be delivered to railroad employes at the nearest accessible point. See Rule 19 Mail Book consisting of Instructions relative to Transportation and Handling of United States Mail effective May 1, 1944. This book will be referred to hereinafter as Mail Book.

If there was a Mail Messenger at this location it was the Postmaster. It appears that the Postmaster picked up Mail at the station. Whether or not he ever delivered to and from Mail cars direct is not made clear. He did, however, receive Mail from the station, on occasions out of the station itself and on other occasions out of a lock box provided by the Carrier for deposit of Mail by train service employes outside the hours of service of the Agent-Telegrapher.

Whether or not the Postmaster under the circumstances may be regarded as a messenger within the meaning of the rule is not clear, but this rule does make clear that the Post Office Department reserved the right to itself to make delivery of Mail to and from trains. Therefore no violation

of the Agreement between the parties here could be predicated upon an exercise by the Post Office Department of its own prerogative in this respect either without or within the hours of service of the Agent-Telegrapher.

Mail Book Rule 20 contains special reference to the arrival of Mail at stations where no railroad representative is on duty. Under such circumstances it is mandatory that the Mail Messenger shall receive the Mail unless the Post Office Department requires that the Carrier shall handle it. There is no evidence that the Post Office Department required handling by the Carrier at this point under the circumstances involved.

In order, therefore, to say that the Agent-Telegrapher was denied work outside his assigned hours in the handling of Mail of which complaint is made it would be necessary to say that the handling from train to station and from train to locked box was work which belonged to him under the Scope Rule or under specific assignment of work.

It is difficult to see how it could fall in either category under the facts outlined here. If the work had been required of the Carrier by the Post Office Department, as well it might have been under Mail Book Rule 20, the handling under Scope Rule interpretations would go where positive Rule or tradition and usage on the Carrier placed it. This the Department did not do. It retained control and in so doing prevented it from becoming work covered by the Scope Rule of the Agreement between the parties to this controversy.

Accordingly it must be said that the portion of the claim relating to the handling of Mail has not been sustained.

The other phase of the claim as presented is based upon failure to call the Agent-Telegrapher outside his assigned hours to unload, check and place LCL merchandise in the freight house. The claim as considered by the parties in their respective presentations includes also the handling of baggage and express and receipt of shipments and the preparation by train service employees of necessary documents for receipt into transportation of such shipments.

One of the points stressed by the Carrier in this connection is past practice on this Carrier and on the lessor of this line, the line being now operated by this Carrier under lease, by reason of which it contends that such work as this under conditions such as obtained at Animas, could not be said to belong exclusively to the Organization.

It has been said repeatedly in many different ways that past practice, no matter how long continued, unless it has been agreed to by the parties or there has been such an acquiescence as amounts to an Agreement, does not furnish a basis for removal of work from an Agreement. Nothing appears in this record which amounts to an Agreement that the work involved here could be removed.

If therefore this work belonged to the Organization under the Scope Rule, it was not properly removed therefrom on the basis of past practice.

Another point is made that the Scope Rule does not define the work of the position involved; hence, it cannot be said to necessarily belong to the Agent-Telegrapher or the Organization. This Division, however, in a long line of Awards has said that such work as this did belong to the Organization and that it could not be removed by the Carrier without penalty.

In Award 602 where a similar Scope Rule was being interpreted and applied to a one-man station it was said in part:

"This language fairly construed most certainly prohibits the Carrier from removing positions or work from the operation of the Agreement * * *."

The principle was repeated in Awards 1082, 1273, 1566, 2086, 2155, 2418, 3931, 4160 and numerous others.

It must be said, therefore, that in those instances when the Carrier failed to give the Agent-Telegrapher a call for the performance of the agency work and allowed it to be performed by others, it violated the Agreement and that it shall be required to respond as for a call.

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

That the parties to this dispute waived oral hearing thereon;

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 the portion of the claim based on the handling of Mail should be denied.

That the portion of the claim based on the handling of baggage, express, LCL freight and other agency work should be sustained.

AWARD

The claim based on the handling of Mail denied per Opinion and Findings.

The claim based on the handling of baggage, express, LCL freight and other agency work is sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 22nd day of July, 1952.