

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Baltimore and Ohio Railroad, that:

1. the Carrier violated and continues to violate the terms of the prevailing agreement between the parties when, commencing on or about November 1, 1947, it unilaterally removed from the scope of the agreement and from the employes thereunder the work of preparing reports and other duties incidental to the interchange of cars at Bruceton, Pa., outside the assigned hours of the agent-operator at that point, and delegated the performance of such work to employes not under the agreement located at another station; and,
2. the Carrier shall now restore to the scope of the agreement and to employes thereunder the above described work at Bruceton, Pa.; and,
3. the employes under the agreement, occupying the position of agent-operator at Bruceton, Pa., be compensated under the Call and/or Overtime provisions of the Agreement for each day he has been deprived of such payment because of the Carrier's violative actions.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of July 1, 1928 (reprinted July 1, 1948) is in evidence, hereinafter referred to as the Telegraphers' Agreement; copies thereof are on file with the National Railroad Adjustment Board.

Bruceton, Pennsylvania is located on the Pittsburgh Division single track line of railroad 11.9 miles from the city of Pittsburgh. It is a junction point with the Pittsburgh and West Virginia Railway where freight cars are interchanged between these two railroads. It is a one-man agency in charge of an agent-block operator with assigned hours 8:00 A. M. to 5:00 P. M. with one hour for lunch.

Due to the interchange of cars between the two railroads at Bruceton, it has been necessary in the past for the incumbent of the agent-block operator position at this point to work overtime or be called back to work if and when the P&WVA Railway delivered freight cars for interchange to the B&O Railroad outside of the hours assigned to said agent-block operator position.

that this question must be resolved in the affirmative and in support of such statement refers this Division to its recent Award No. 5318, where it was held, together with Referee Angus Munro, in the opinion of Board, as follows:

"The point then is may Carrier transfer to one not covered by the Schedule duties which Telegraphers do not have the exclusive right to perform? We think it may, see Award 4992, Opinion by Referee Carter.

Since we are finding the Schedule only governs that type of work which historically and traditionally belongs exclusively to Telegraphers we next ask, were the duties given to the outsider of such a nature? Petitioner averred those duties of which are indisputably Telegraphers and which Carrier styles as routine were infrequently performed by the Censor or Manager but that the supervisory duties, checking work of others, assigning circuits, arranging relief and rest days were the predominant duties.

As hereinabove pointed out the controlling point is not whether such duties were previously performed by a Telegrapher but rather does a Telegrapher have the exclusive right to perform them. The representative for Petitioner made an effective argument with reference to the theory upon which this claim is pleaded. However, he was not furnished with evidence to show the work other than routine work belonged to his craft alone. On that basis the Board may not find in the affirmative."

The Carrier asserts in conclusion that on the basis of the precedents handed down by this Division, this claim is entirely without merit.

In view of the above and in view of all that is contained herein, the Carrier respectfully requests this Division to find this claim as being one without merit and to deny it accordingly.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant is an Agent-Block Operator for the Carrier at Bruceton, Pa. This is a junction point where the Pittsburgh and West Virginia Railway Co. connect with the B. & O.

The two railroads interchange cars at Bruceton, Pa.

The Claimant's assigned hours were 8:00 A. M. to 5:00 P. M. with one hour for lunch. This being a one-man station the Claimant prior to November 1, 1947 was called back or held over when interchange of cars were made after 5:00 P. M. Claimant was paid under the overtime or call provisions of the Agreement.

On November 1, 1947 the Carrier transferred the work incidental to interchange of cars at Bruceton after 5:00 P. M. to employes at Glenwood, Pa. This last station is approximately 7 miles from Bruceton.

The employes handling the interchange at Glenwood, Pa. come under the Clerks' Agreement and not the Telegraphers'.

It is necessary for clerks at Glenwood to prepare Form FT-1 and return it to the Agent-Block Operator at Bruceton as well as return other papers. The clerks also made out home route cards and attached SX stickers on cars needing them.

The Claimant contends that the transfer of this work violated Article I, the Scope Rule, Article 6, Seniority and Promotion Rule, and Article 18, the Overtime and Call Rule.

There can be no question that at one-man stations as here involved all work of the station including clerical duties, come within Article I of the Telegraphers' Agreement. See Award 4392.

When work is taken away from one-man stations as in the instant case and a claim is filed it is not necessary to serve notice on the parties to whom the work is given as contended by the Carrier. The violation, if any, was committed by the Carrier. The real parties in interest would be only the Carrier and the Claimant. The claim is that the Telegraphers' Agreement was violated by the Carrier taking work away from the Agent-Block Operator. The question of whether or not the Telegraphers' Agreement was violated cannot affect the Clerks. This case can be distinguished from the cases cited by the Carrier. If the Clerks were attempting to take the work away from the Claimant, notice to the Claimant would be necessary and this Board would have no jurisdiction. The Board has jurisdiction of the dispute and it is not necessary to this decision to bring in or to have notice served on third parties. See Award 5410.

It is well settled that it is managerial prerogative to change interchange points where there is no contract provision against it and the change does not need to be negotiated, however, in the instant case the Carrier did not change the interchange point, that still remained at Bruceton, but the Carrier did take work away from the interchange point at Bruceton, by attempting after 5:00 P. M. of each day to change the clerical work and the point of interchange. It was necessary to send back to Bruceton, and the Claimant, certain papers and forms needed there and coming from the interchange of cars at Glenwood, which indicates that Bruceton was still an interchange point and entitled to the work. If the interchange point had been moved from Bruceton to Glenwood and no interchange of cars done at Bruceton, then the Claimant could not be heard to complain, however, when as here, the intent is to deprive the Claimant of work by circumventing the Agreement then there is a violation and this claim is just.

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 Agreement was violated.

AWARD

Claim 1 and 2 sustained. Claim 3 sustained at the pro rata rate.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 31st day of October, 1952.