# Award No. 6841
# Docket No. TE-6699

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Fred W. Messmore, Referee

---

## PARTIES TO DISPUTE:

## THE ORDER OF RAILROAD TELEGRAPHERS

## THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (Western Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway; that

1. The Carrier violated the terms of the agreement between the parties when, without conference or agreement, it removed the work of loading and unloading mail, baggage and express between the warehouse and trucks or busses at Lewis, Kansas, and assigned this work, outside the assigned hours of the agent-telegrapher at this one-man station to employes not covered by said Agreement; and

2. The work here involved shall be restored to employes covered by the Agreement, and

3. The Carrier shall now be required to compensate, beginning with November 24, 1950, the occupant of the agent-telegrapher position at Lewis, Kansas for each day and each instance of the violation in accordance with the call and overtime rules of said Agreement.

EMPLOYES' STATEMENT OF FACTS: Agreements bearing effective dates of December 1, 1938 and June 1, 1951, between the parties are in evidence.

Prior to November 24, 1950, (exact date unknown to the Organization) the Santa Fe Trail Transportation Company, a subsidiary of the Carrier here involved, established truck, truck-rail or rail-truck service to handle freight, mail, baggage and express to and from various stations on its line, one of which is Lewis, Kansas.

Prior to the time this truck service was established employes covered by the Telegraphers' Agreement performed all of the work of handling freight, mail, baggage and express between trains and stations at Lewis, Kansas.

Lewis, Kansas, is a one man station. Page 70 of the current Agreement between the parties shows the following:

"No useful purpose would be served by further reference to the facts which heretofore have been so fully stated. It suffices to say that where carefully examined they disclose a situation similar to the one involved in, and are governed by, our decision in Award No. 5404 adopted July 26, 1951. Therefore, based upon what is there said and held, and the supporting Awards therein cited, we have been impelled to conclude the facts and circumstances set forth in the record of the instant case established a custom and practice clearly indicating an understanding and intention on the part of all parties that the work in question could be performed by employes of the Central Railroad of New Jersey and that it has never been covered by or included in the scope of the current Agreement.

"Additional decisions of this Division of the Board not cited in Award No. 5404 but nevertheless sustaining and supporting the conclusion first announced appear in Award 1418, 1567, 1606, 1876, 4104, 4208 and 4259.

"The fact, if it is a fact, as the Organization charges, that it did not know of the custom and practice in question affords no sound ground for a contrary conclusion. As stated in Award No. 5404, see also Awards 1609 and 4208, the Organization is chargeable with knowledge of the working conditions in operation on the property and we must assume it has knowledge thereof, at least from the time it took over the Telegraph Department employes' Agreement of October 20, 1933, long prior to its negotiation of the current Agreement." (Emphasis supplied.)

* * * *

In conclusion, the Carrier respectfully asserts that the claim of the Employes in the instant dispute is entirely without support under the Agreement rules and should, for the reasons previously expressed herein, be either dismissed or denied in its entirety.

All that is contained herein is either known or available to the Employes or their representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This claim arises at Lewis, Kansas, located between Hutchinson and Kinsley, Kansas. After discontinuance of certain train service, the Carrier contracted with the Santa Fe Rail Transportation Company, commonly referred to as the SFTT Co., to handle, by trucks, the baggage and express which was formerly moved by disconnected trains. There is no occasion to labor the factual situation further. The case is governed by the principles stated in Award 6840, the issues being somewhat analogous.

For the reasons stated in Award 6840, we conclude the claim should be sustained.

**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 the claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1955.

**DISSENT TO AWARD 6840, DOCKET TE-6698, and AWARD 6841, DOCKET TE-6699.**

Awards 6840 and 6841 are wrong for misconception of the principles and the work functions involved although a correct recitation of the facts is made in the first paragraph of the Opinion of Board, viz: "Upon arrival at the stations here involved, the driver of the truck for the SFTT Co., who was furnished with a key to the stations, unloaded the mail, baggage, and express, placed the same inside the doorway of the station and picked up outgoing shipments of the same type which had been left inside the doorway of the station by the agent, and then proceeded on his route."

The foregoing quotation is a disclosure contained in the record and adopted as factual matter by the referee; therefore, all that is involved is the simple pick-up or delivery of baggage or express from just inside the warehouse door.

As to the furnishing of a key to the driver of the truck: We have soundly said in **Award 6525** that "We do not think that the act of furnishing a key to the truck driver is in violation of the Agreement." And in **Award 4463**, we said again that it is not a violation for the Carrier to furnish the trucking company with a key to the freight house.

There was no performance of any work by the truck driver within the rail carrier's station or warehouse. This is the settled line of demarcation. In Award 6525, **supra**, where the claim was denied, we said: "There is no showing that freight handler's equipment was used in moving freight within the freight warehouse." In **Award 5526**, where the claim was sustained, it was on the basis that "Checking and trucking freight **inside** the warehouse was within the scope" of the Agreement, but even there we held that "Pick-ups and deliveries by outsiders should be on the platform or on the floor at the door of the warehouse."

It is, therefore, not only erroneous but most unsettling for the subject awards to recognize the fact that truck drivers placed shipments inside the doorway of the station and picked up outgoing shipments which had been left inside the doorway by the Agent and then sustained the within claims in the face of directly opposed holdings in previous awards based upon a consideration of identical facts.

The awards are also in error on the ground of dismissing past practice as being effective "only to defeat reparations for past violations" and as not changing "a rule on a specific subject that is clear and unambiguous". The trouble with this holding is that, the terms of the rule are so sparse as to be completely devoid of any work description whatsoever. Certainly, with our past awards, some mentioned in this dissent, recognizing the complete propriety of truck drivers' picking up and delivering from and to a point inside the warehouse door, this scope rule cannot be considered as being so "clear and unambiguous" as to require that a truck driver be met at the door or any place else by the agent, in person. The practice referred to and attempted to be subordinated by the majority opinion goes back to 1927 on the Eastern Lines of this Carrier and 1936 on its Western Lines.

The practice embraces nearly 200 stations and goes uninterruptedly back to a time commencing, in the one case, seven years before this Board was created and in the other case, two years after this Board was created. We cannot dispose of that with a wave of the hand, therefore, we dissent.

/s/ E. T. Horsley
/s/ R. M. Butler
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ J. E. Kemp