

Award No. 6975
Docket No. TE-6863

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter—Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad) that:

1. The Carrier violated and continues to violate the terms of the current agreement between the parties to this dispute when it unilaterally removed from the Scope of said agreement and from the employees thereunder the work of preparing waybills and other duties incidental to the billing of freight at Knippa, Texas on each Saturday and/or holiday commencing on Saturday, July 7, 1951, work performed Monday through Friday by the agent-telegrapher at that location, and delegated the performance of said work to an employe or employes not subject to said agreement.
2. Carrier shall restore to the scope of the agreement and to the Agent-telegraphers' position at Knippa, Texas, the above described work, and,
3. Pay Mrs. V. R. Dodson, Agent-telegrapher, Knippa, regularly assigned this one-man agency, a call for each Saturday and holiday, that she was denied the right to perform said work, and
4. Any other employe under the agreement, occupying the position of Agent-telegrapher at Knippa, since July 7, 1951, a call for each Saturday or holiday said violation occurs or until Carrier restores said work to employes coming within the scope of the Telegraphers' Agreement. This to be determined by a joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the parties to this dispute hereinafter referred to as the Telegraphers' Agreement, bearing an effective date of December 1, 1946, revised to include the 40-Hour Week Agreement effective September 1, 1949.

Knippa, Texas, is located on the Southern Pacific Lines in Texas, 11 miles east of Uvalde. It is a one-man agency in charge of an Agent-telegrapher, with assigned hours 8:00 A. M. to 5:00 P. M., one hour out for lunch.

antedating the current Telegraphers' Agreement and, therefore, taking precedence over that agreement.

The Carrier has definitely shown that:

1. Conductors have always by custom and practice and specific instructions of long standing, signed bills of lading and prepared Conductors' memorandum waybills. That Clerks and others have also prepared waybills as a part of their duties.

2. The Agreement with the Telegraphers' Organization was negotiated while such instructions and practice were in effect, and there is no restriction expressed or implied in the current agreement reserving such work to Telegraphers or restricting anyone else from performing the service.

3. This Board has heretofore rendered awards denying the exclusive right of Telegraphers to perform fragmentary pieces of work, such as here involved, while the station is closed. In addition to examples already cited, please consider the following from Opinion of Board (Referee Boyd) in Award 5235:

"There is a contention made by Petitioner that the employees were denied work of selling tickets where the passengers boarding trains at Hillsdale, when the station was closed, paid cash fares to the train conductor. There is no provision of the contract giving the employees under the Telegraphers' Agreement the right to require all passengers to purchase tickets before boarding trains. On the other hand, it is customary for train crews to collect cash fares when tickets have not been purchased. We cannot find, therefore, that there has been a violation of the Scope Rule in this respect."

4. Managerial discretion is certainly controlling as to how work is to be performed unless limited by Agreement; and no such limitation exists here, as it has been clearly shown that the rule limiting the right of others than telegraphers to perform certain work under the current Telegraphers' Agreement does not in any way limit the right of Conductors or others to sign bills of lading or to prepare memorandum waybills or regular waybills.

No rule can be found in the Telegraphers' Agreement supporting this claim. It is therefore, subject to the following from Opinion of Board in Award 6107.

"This Board must determine the rights under this contract from the four corners of the Agreement. Unless language expressly or impliedly authorizing payment as claimed here can be found in the Agreement itself, this Board can not read into it such a meaning.

"In Award 2491, this Board said: '* * * We can only interpret the contract as it is and treat that as reserved to the Carrier which is not granted to the employees by the Agreement.' See Awards 4304, 2622, 5307. Any change to be made in a contract to meet a condition as here presented is a matter for negotiation between the parties. We can neither legislate nor can we write into the Agreement that which is not there."

The claim, for the reasons stated, is entirely devoid of support under the Agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Knippa, Texas, is a one-man agency with an Agent-telegrapher assigned Monday through Friday. The station is closed on Saturdays, Sundays and holidays. The Southwest Stone Company has a stone quarry one mile from Knippa. For sometime after the establishment of the five day week for the Agent-Telegrapher, the stone company called the

Agent-Telegrapher when they had a carload of stone to ship on Saturday for the purpose of having him sign the bill of lading and bill the car. On or about July 7, 1951, Carrier required the conductor of the local freight train to sign the bill of lading and handle the car into San Antonio on a conductor's memorandum waybill. The claim is made by the Agent-Telegrapher for a call on account of being deprived of the work on Saturdays when the conductor billed carloads of rock.

The work in question can under certain circumstances be performed by others than telegraphers. We have held many times, however, that station work in one-man stations belongs to the Agent, a position within the scope of the Telegraphers' Agreement. Station work outside the hours assigned to the Agent of a one-man station is also work that belongs to the station agent. Awards 4392, 5993. The decision in the present case is based on the fact that the Agent-Telegrapher at a one-man station owns all the station work at that point and not on the ground that the signing of bills of lading and billing cars is the exclusive work of a Telegrapher. See also Award 54, Special Board of Adjustment No. 41.

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

That the parties 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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 29th day of April, 1955.