

Award No. 8045

Docket No. TE7653

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, 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 and continues to violate the terms of the agreement between the parties when it permits or requires train crew employees and other employees who are not covered by the Telegraphers' Agreement to perform the duties of handling baggage, express, U. S. Mail, empty cream cans and LCL freight on certain dates at stations at a time that the agent-telegrapher is not on duty at Cochise, Glendale, Duncan, Myrtle Creek, Earlimart, McFarland and Pixley; and
2. These duties and the work involved shall be assigned to and performed by employees under said agreement.
3. The Carrier shall be required to compensate the Agent-telegraphers on the basis of a "call" payment on each occasion on each day the violations take place and shall continue until they are corrected commencing on the following dates:

Cochise, Arizona commencing September 18, 1952.

Glendale, Oregon commencing November 18, 1952.

Duncan, Arizona commencing January 11, 1953.

Myrtle Creek, Oregon commencing July 14, 1953.

Earlimart, California commencing August 3, 1953.

McFarland, California commencing August 4, 1953.

Pixley, California commencing November 19, 1953.

NOTE: The actual number of days involved, and the compensation due, to be determined by a joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: During the year of 1949, several disputes arose on this property concerning the performance of the so-

In this connection particular attention is called to Award 5949, denying the claim of telegraphers on the Union Pacific that such work belonged exclusively to them, in which case the Board stated in part:

"The record shows clearly that agent-telegraphers have never had the exclusive right to the work at issue at these stations."

That statement is equally applicable to the facts in this case. As previously shown, the claimants in this docket, i.e., the agent-telegraphers, have never had the exclusive right to the work in question.

Even if the claims were otherwise valid (carrier does not so concede but expressly denies), there would be no merit or basis for claims on dates where other employees coming within the scope of the current agreement are on duty.

The carrier asserts that it has been conclusively established that the work here in dispute does not belong exclusively to the class of employees covered by the Telegraphers' Agreement and that a sustaining award of this Division would therefore have the effect of writing into the agreement a rule that has not been negotiated by the parties. This Board has rendered many awards, too numerous to require citation, to the effect that it does not have such authority.

CONCLUSION

From the evidence presented in this docket, carrier asserts that it has been conclusively established that:

- (1) The Board should not assume jurisdiction in this case because the employees covered by the Clerks', Conductors' and Trainmen's Agreements have not been given an opportunity to be heard;
- (2) The claims submitted in this docket should be dismissed because of being vague, indefinite, and present a blanket claim for unnamed individuals on unspecified dates without necessary information to permit determination of nature and amount of claim;
- (3) The handling of mail, baggage, express, empty cream cans and LCL freight between train or truck and station has never been allocated exclusively to agent-telegraphers either by rule or practice.
- (4) The handling of mail, baggage, express, empty cream cans and LCL freight at stations has always been performed by train service employees or employees of Pacific Trucking Company when trains or trucks arrive outside of the assigned hours of station forces; and
- (5) Such work has been recognized by the petitioner as work properly performed by train service employees and employees of the Pacific Motor Trucking Company.

Therefore, carrier requests that the claim in this docket, which is without basis or merit, if not dismissed, be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF THE BOARD: While the Employees' Ex Parte Submission in this case states the Claim in very general terms, it is narrowed and made more specific by the Record. The Record shows that as the case was handled

on the property the Employees charged that the Carrier violated the applicable Agreement when:

(1) At Cochise, Arizona, on eight specific dates, drivers of Pacific Motor Trucking Company unloaded LCL merchandise into the freight house while the Agent-Telegrapher was not on duty. (The scope of the Cochise Claim is indicated by Employee Exhibits 1 thru 9.)

(2) At Glendale, Oregon, on various dates starting November 18, 1952, train service employees unloaded express from Train No. 329, and on various dates starting April 30, 1954, train service employees unloaded baggage and cream cans from Train No. 329, when the Agent-Telegrapher was not on duty. (The scope of the Glendale Claim is indicated by Employee Exhibits 10 thru 28.)

(3) At Duncan, Arizona, on various dates starting January 11, 1953, drivers of Pacific Motor Trucking Company unloaded LCL merchandise into the freight house when the Agent-Telegrapher was not on duty. (The scope of the Duncan Claim is indicated by Employee Exhibits 29 thru 38.)

(4) At Myrtle Creek, Oregon, on various dates starting July 14, 1953, express messenger loaded or unloaded express from Train No. 329, placing it in the warehouse or removing it therefrom, and, on various dates starting October 25, 1953, train crew on Train No. 329 loaded or unloaded baggage, placing it in the warehouse or removing it therefrom, when the Agent-Telegrapher was not on duty. (The scope of the Myrtle Creek Claim is indicated by Employee Exhibits 39 thru 45.)

(5) At Earlimart, California, on various dates starting August 3, 1953, and at McFarland, California, on various dates starting August 4, 1953, train crews and express messengers on Trains Nos. 55 and 56 unloaded and loaded express when the Agent-Telegrapher was not on duty. (The scope of the Earlimart and McFarland Claims is indicated by Employee Exhibits 46 thru 52.)

(6) At Pixley, California, on various dates starting November 19, 1953, members of Trains Nos. 55 and 56 loaded or unloaded mail, baggage and express when the Agent-Telegrapher was not on duty. (The scope of the Pixley Claim is indicated by Employee Exhibits 53 thru 60.)

The disposition of this case is governed by Awards 5877 and 7593, which involved the same Parties, the same Agreement, and the same general issue involved herein. Consequently, this case is disposed of as follows:

Cochise: Claim for a Call on September 18, 26, October 10, 17, 21, November 7, 1952, and for one hour at overtime rates on October 2 and 15, 1952, when the Agent-Telegrapher was not on duty is sustained. Claim for a Call on dates other than these is denied since the Cochise Claim was not handled as a "continuing claim" after it left the Local Chairman stage.

Glendale: Claim for a Call on each date starting November 18, 1952, that express messengers unloaded express and for a Call each date starting April 30, 1954, that train service employees unloaded baggage and cream cans when the Agent-Telegrapher was not on duty is denied since in handling on the property there was no charge or showing that non-telegraphers did anything more than merely unload said items from the train (there was no charge or showing that they handled the items from the train into the freight house).

Duncan: Claim for a Call on each date starting January 11, 1953, and subsequent thereto that drivers of Pacific Motor Trucking Company unloaded

LCL merchandise into the freight house when the Agent-Telegrapher was not on duty is sustained.

Myrtle Creek: Claim for a Call on each date starting July 14, 1953, and subsequent thereto that express messenger on Train No. 329 loaded or unloaded express to and from Train No. 329, placing it in the warehouse or removing it therefrom, and, for a Call on each date starting October 25, 1953, that train crew on Train No. 329 loaded or unloaded baggage to and from Train No. 329, placing it in or removing it from the baggage room when the Agent-Telegrapher was not on duty is sustained, but not to exceed one Call on any one date.

Earlimart and McFarland: Claim for a Call on each date starting August 14, 1953, that train crews and express messengers unloaded and loaded express at these two stations when the Agent-Telegrapher was not on duty is denied since in handling on the property there was no charge or showing that non-telegraphers did anything more than merely load said items into or unload them from the train.

Pixley: Claim for a Call on various dates starting November 19, 1953, when members of Trains Nos. 55 and 56 loaded or unloaded mail, baggage and express when the Agent-Telegrapher was not on duty is denied since in handling on the property there was no charge or showing that non-telegraphers did anything more than merely load said items into or unload them from the train.

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 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 Claim should be narrowed as indicated in the Opinion of the Board, and that the Claim as so narrowed should be sustained in part and denied in part as indicated in said Opinion.

AWARD

Claim is sustained in part and denied in part as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 30th day of July, 1957.