

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY
(South-Central and Northwestern Districts)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (South Central and Northwestern Districts) that:

1. Carrier violated the agreement between the parties hereto when on the 8th day of April, 1954, it failed and refused to call C. N. Turner, Agent-Telegrapher, Murtaugh, Idaho, who was available, ready and willing to perform services in connection with executing bill of lading from shipper, preparing waybill and station accounting incidental thereto on car of potatoes (PFE 61906) loaded and originating at Murtaugh, which work was exclusively reserved in the agreement to be performed by said C. N. Turner, Agent-Telegrapher.

2. Carrier violated the agreement between the parties hereto when on the 12th day of April, 1954, it failed and refused to call C. N. Turner, Agent-Telegrapher, Murtaugh, Idaho, who was available, ready and willing to perform services in connection with executing bill of lading from shipper, preparing waybill and station accounting incidental thereto on car of potatoes (PFE 75404) loaded and originating at Murtaugh, which work was exclusively reserved in the agreement to be performed by said C. N. Turner, Agent-Telegrapher.

3. Carrier violated the agreement in requiring or permitting other employes, in each instance described in paragraphs 1 and 2 to perform such work.

4. Carrier shall be required to compensate C. N. Turner for one call, as prescribed in the agreement, for April 8, 1954 and one call for April 12, 1954.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement between Union Pacific Railroad Company, hereinafter called Carrier or Company, and The Order of Railroad Telegraphers, hereinafter called Employes or Telegraphers, governing wages and working conditions of employes covered thereby. The current agreement became effective on the 1st day of January, 1952.

On Saturday, November 3, 1951, Saturday November 10, 1951, and Sunday, November 18, 1951, a Conductor picked up cars of sugar beets at Kuna, signed the bill of lading prepared by an employe of the sugar company and moved the cars to Nampa where the waybill was completed. The station at Kuna was closed on those days.

It appears that for many years the instructions issued by the Carrier to agents and conductors have provided that agencies not open 24 hours per day would be treated as non-agency stations when employes were not on duty, and carload shipments would be moved on conductor's memorandum waybill to the first open agency where the train stopped for billing,

There is no evidence that an agent has ever been called on a rest day to bill such carload shipments and since billing cars is not work belonging exclusively to telegraphers, there is no basis for the claim.

In most of our Awards sustaining claims on the basis that station work at one man stations outside the Agent's assigned hours belongs to the Agent, there has been some prior practice of calling the Agent to perform the work involved. Here that is not the case so those Awards are not controlling. Here the Carrier merely adopted an alternative procedure in accordance with instructions in effect for many years without any prior challenge thereof."

In Award No. 7078 (Whiting) the Board held that what was done here did not violate the Telegraphers' Agreement. It took note of the fact that there was on this Carrier no prior practice of awarding all work at one man agencies to the agent at the point and held that in the absence of a prior practice, the one-man agency theory did not apply to this Carrier.

It ruled out, as well, the applicability of the Scope Rule, saying —

"* * * billing cars is not work belonging exclusively to telegraphers * * *"

The situation here is identical in all respects to the one involved in Docket TE-6861, Award No. 7078. As such, the force of that award, construed in the light of this record, requires a denial by the Board of the claim covered by this Docket.

All information and data contained in this Response to Notice of Ex Parte Submission are a matter of record or are known by the Organization.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: The employes state that this dispute concerns a violation of the Scope Rule and Rule 26 of the Agreement. The Carrier failed to permit the agent at Murtaugh, Idaho, a one-man station, to perform work belonging to his position. The compensation claimed for the claimant is for a call on April 8, 1954 and a similar call on April 12, 1954.

The claims set forth by the employes are similar to the claims set forth by the same employes on the same Carrier which resulted in Award No. 7078. The only difference is that this claim refers to a car of potatoes, rather than a car of sugar beets and the one-man agency in this claim is located at

Murtaugh, Idaho, and the work was performed at Burley, Idaho. The violation complained of in this claim was performed after the assigned hours on a regular assigned day of the claimant and not on a rest day of the claimant, as was the fact in the claim that resulted in Award No. 7078.

We are in accord with the statement found in Award No. 7078 in that it appears that for many years the instructions issued by the Carrier to the agents and conductors have provided that agencies not open twenty-four hours per day would be treated as non-agency stations when employes were not on duty, and carload shipments would be moved on Conductors' Memorandum Way Bill to the first open agency where the train stopped for billing. Award No. 7078 stated that: "There is no evidence that an agent has ever been called on a rest day to bill such carload shipments and since billing cars is not work belonging exclusively to telegraphers, there is no basis for the claim."

In this claim there is no evidence that this agent has ever been called after his assigned hours on his regular work day to bill such carload shipments. There is evidence in the docket that this agent was called on days subsequent to the date of claims. There being no prior practice of calling the agent shown by the employes in this docket to perform the work involved, we must follow the reasoning set forth in Award No. 7078. The Carrier did not violate the Telegraphers Agreement.

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 Employee involved in this dispute are respectively Carrier and Employee 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of July 1961.