

Award No. 10970

Docket No. TE-9894

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Ralph D. McMillen, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

PERE MARQUETTE DISTRICT

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chesapeake and Ohio Railway Company, Pere Marquette District, that:

1. Carrier violated and continues to violate the agreement between the parties when, commencing on April 19, 1955, without conference or agreement, it removed the work of processing and handling l.c.l. freight way bills and l.c.l. freight at twenty-four stations on the Grand Rapids and Saginaw Divisions and assigned this work to persons not covered by the agreement.

2. Carrier shall be required to restore this work to employees covered by the agreement; and

3. Carrier shall compensate the occupant of the Agent's position at each station involved in accordance with the call rule on each day the violation occurs commencing April 19, 1955 and continuing thereafter until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

The stations involved are on the Grand Rapids and Saginaw Divisions of the Carrier and are all in the State of Michigan. The stations are as follows:

Allegen	Grand Haven	Kent City
Alton	Grandville	Lake Odessa
Bailey	Grant	Lowell
Belding	Greenville	McCords
Casnovia	Hamilton	Newaygo
Clarksville	Hudsonville	Portland
Elmdale	Ionia	Sparta
Fremont	Zeeland	White Cloud

- 6887 — "Claim (b) is denied by reason of insufficient showing that the clerk on duty at the time in question could not have weighed these two revenue cars."
- 7211 — "... the record shows no financial loss to any of the claimants."
- 7212 — "However, the record does not show that claimant has suffered any loss because the position was not bulletined promptly, and no rule is cited which entitles him to the additional compensation claimed."
- 7241 — "Even if we concede that Section 6 was applicable in this situation, there was no violation of the rule which resulted in a loss to the claimants."
- 7309 — "The assessing of the penalty claimed would be an extremely drastic measure to be invoked and one of doubtful legality under the rules of the agreement, as no specific rule can be used as a basis for such an award."

In summary, Carrier has proved:

1. The dispute here before your Board should be held in abeyance with no decision on merits until the interested third party has been notified and afforded an opportunity to protect its interests.
2. The alleged claims and/or grievances contemplated in the dispute here before your Board have been presented initially in a manner other than that which has been agreed upon as covering the presentation of ALL CLAIMS AND GRIEVANCES. Petitioner has declined to correct fatal defects in this respect in handling on the property. It follows that no dispute growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions can be properly before your Board for adjudication at this time. The first two parties to this dispute have so agreed.
3. The Telegraphers' agreement has not been violated as alleged by petitioner.
4. The work described in Item 1 of petitioner's claim can not be "restored" to the Telegraphers craft when and where it has never reposed exclusively within that craft, and no claim for "restoration" was presented on the property in any event, a prerequisite to handling by your Board.
5. Payment of the "call" penalty would not be in order in any event. In fact, no penalty at all would be in order had the agreement been violated as alleged.

All data presented herewith have been placed before the employes in handling this case on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim of the Organization that the Carrier violated and continues to violate the Agreement between the parties

when, commencing on April 19, 1955, without conference or agreement, it removed the work of processing and handling l.c.l. freight waybills and l.c.l. freight at twenty-four stations on the Grand Rapids and Saginaw Divisions and assigned this work to persons not covered by the Agreement.

The Organization states that from the time agencies were first established at twenty-four stations, the work of billing outbound l.c.l. freight and the work of processing the inbound l.c.l. freight waybills, into bills for the consignee, known as "expensing way bills," was performed by the occupant of the agents position. Further

"The prime factor in bringing about this change was the adoption by the Carrier of a different method of transporting l.c.l. freight to and from these stations. Instead of hauling or transporting l.c.l. freight on trains, the Carrier contracted with an outside trucking company doing business under that name "Masselink Brothers Trucking Service" to transport less-than-carload freight between the Carrier's Grand Rapids freight house and any consignor or consignee located within the pick-up and delivery limits of the stations listed above. The contract also included transporting l.c.l. freight to and from the Grand Rapids freight house and the freight house of the Carrier and any of these stations. This means that employes of the trucking company receive the freight at the Grand Rapids freight house and transport it directly to the business establishment or home of the consignee and, in turn, receive freight from the customers and transport it to the Grand Rapids freight house.

"The expense bill is made at Grand Rapids by a clerk; the trucking company employe secures the signature of the consignee on the receipted copy of the expense bill, collects freight charges due, if any, and after completion of his tour in any one city delivers the copies of the expense bills, together with any collections, to the agent at the station. The agent includes these items in his station accounts the same as if it had been handled in the usual manner. Outbound freight received by the trucking company employes is transported to Grand Rapids where it is way-billed to its destination by clerks; the way bills are headed as from the station where the freight originated and a copy of this way bill is sent to the agent at that station and is included and carried in his station accounts the same as if it had been handled in the usual manner.

"All the expensing and way billing performed under this program is handled in the name of and credited to the station where the freight originates or terminates. It is part of the station work of the station to which it is credited."

The Employes rely primarily on the Scope Rule of the Agreement to support their position. Scope Rule reads:

"RULE 1 — SCOPE

"(a) These rules shall govern the hours of service, working conditions and compensation of the following classes of employes:

Agents

Agent-Operators (Agent-Telegraphers and Agent-Telephoners)

Ticket Agents (as listed in wage scale)

Agents (small non-telegraph or non-telephone)

Chief Operators

Operator-Clerks (telegrapher-clerks and telephoner-clerks)

Operator-Cashiers

Operator-Levermen

Operator-Bridgetenders

Operators (telegraphers and telephoners but not including telephone switchboard operators)

Levermen

Drawbridge Tenders

Block Operators

Tower and Train Directors

Staff men

Any combination of two or more of the above classifications.

Occupants of any other positions listed in wage schedule.

“(b) As used in this agreement, the word ‘employee’ shall be understood to include all employees of the classifications mentioned in paragraph (a) of this rule unless specific classifications are designated; and the word ‘station’ refers to the location at which employees perform service.”

The Carrier raised the issue that there is an Agreement between this Carrier and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, who are interested parties to the dispute here before the Board, and in accordance with Section 3, First (j), Railway Labor Act, should be notified by the Third Division, National Railroad Adjustment Board and afforded an opportunity to protect their interests. This has been done.

(The Carrier disputed the actual number of stations involved in this dispute, that it should be 19 rather than 24. The Organization “agreed in principle” that there are actually 19 stations involved.)

The Organization states:

“Starting from the time agencies were first established at the above stations, the work of way billing outbound l.c.l. freight and the work of processing the inbound l.c.l. freight waybills into bills for the consignee, known as ‘expensing way bills’, was performed by the occupant of the agent’s position.”

The Carrier rebuts this statement as follows:

- "1. Employees of any kind at 19 stations instead of 24 stations are involved in this dispute.
- "2. Carrier's Exhibit No. 3 specifically shows that clerks were employed at seven of these 19 stations and were performing the work here involved immediately prior to its being transferred to other clerks at Grand Rapids.
- "3. Carrier's records covering the other 12 stations do not go back to the time these stations were established. Our records, in the form of station files going back as far as twenty years in some cases indicate that clerks have been employed at the following of these 12 stations, Grandville, Lake Odessa, Lowell, Newaygo and Portland. Our agreement files, going back to 1911 in the case of the clerks, indicate that clerks were employed at two of these (other twelve) stations, Portland and Newaygo sometime on or before September 1, 1911. These files are incomplete as they do not indicate positions within the Clerks' scope such as station helpers and warehousemen. From these data it is clearly evident that now and/or some time or other in the past, employees of the clerical group have been employed at twelve stations here involved. It must be presumed that employees of the clerical craft perform the work embodied within their scope rule when employed at any station. Carrier submits the work here in dispute is specifically outlined in the Clerks' agreement."

It seems clear to the Board that agents have not performed the work involved here to the exclusion of the Employees of the clerical craft.

The Employees rely primarily on the Scope Rule of the Agreement to support their position. We believe the position is well taken in Award 6824:

"Since the Scope Rule of the effective Agreement is general in character and does not under take to enumerate the functions embraced therein, the Claimants' right to work which they contend belonged to them must be resolved from a consideration of tradition, historical practice and custom; and on that issue the burden of proof rests upon the Employees."

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 Agreement has not been violated.

AWARD

Claim denied in its entirety.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 17th day of December 1962.