

Award No. 12531

Docket No. TE-11496

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD COMPANY
(Western District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad — Western District that:

1. Carrier violated the terms of the Agreement between the parties when, acting without agreement, it removed from the employe subject to said agreement, at the Agency Station at Berea, Ohio, the work of checking, rating, preparing waybills, preparing expense bills and other work in connection with, and incidental to, the handling of less-than-carload shipments of freight originating at and destined to said station, and transferred said work to other stations and to employes not subject to the Agreement.

2. Carrier shall restore such work to the Agency Station at Berea, Ohio, and to the employes subject to the Agreement thereat from whom it was unilaterally taken.

EMPLOYEES' STATEMENT OF FACTS: This dispute involves the transfer of work, by the Carrier acting unilaterally, of the station at Berea, Ohio. Before July 1, 1958, at Berea, Ohio, the Carrier maintained an agency with an agent under the Telegraphers' Agreement. The position of agent-operator was negotiated under the agreement and placed under Seniority District No. 3, at page 65 of the Agreement. The agent, before July 1, 1958, handled all of the agency work of checking, rating, preparing waybills, preparing expense bills and other work in connection with, and incidental to, the handling of less-than-carload freight shipments originating at or destined to this station. By notice of June 16, 1958, the agent at Berea was told that as of July 1, 1958, the Carrier was transferring the billing of all LCL freight outbound from their stations to the Carrier's offices at Orange Avenue in Cleveland, Ohio. The agents were instructed that on outbound shipments they should arrange to forward the shipping orders with the freight to the Orange Avenue Station. This would include freight forwarded by either car or truck. The agents were further instructed that the shipping orders, together with copies of the waybill, would be returned to the respective stations for necessary collections after the work of preparing the waybills and expense

Agent, and all other positions, at the abandoned station are eliminated, in spite of the fact that the shipments previously handled there are now handled at Station B. The same shippers are contacted now by the agent at B as were formerly contacted by the agent at A, just as the same agents are now contacted by the Car Distributor at New Haven as were formerly contacted by the Car Distributor at Hartford."

AWARD No. 8279 — Clerks vs C&O

Referee Lynch — Denied

Carrier removed the work of delivering pay checks from clerical employees and required others, not under the agreement, to do this work. Employees contend this to be a violation of their agreement and claim that the work should be restored with pay for any wage loss. In denying claim, Referee held:

"We repeat what we said in Award 8081:

'Because there is no showing in the record here that

(a) any position was abolished or removed; that

(b) the work of delivering pay checks is assigned to clerks by specific reference in the applicable Agreement, or

(c) is work belonging to clerks to the exclusion of all other classes or crafts, a denial award will be made, Award 7784)'. "

See also Third Division Awards Nos. 6066, 6416, 6587, 6655, 7031, 7299, 7348 and 8320.

It is the Carrier's position that the several awards cited support the Carrier's position in this dispute and conclusively refute the claim of the Organization.

CONCLUSION

Summarizing, Carrier maintains that the basic issue in dispute is one of jurisdiction, and that the claim should be dismissed by your Board for the reason that all parties with a vested interest in the work in dispute have not been accorded an opportunity to protect their individual interests. Then, too, the claim is also without merit. There has been no violation of the current agreement, and your Board should not look with favor upon the organization's attempt to secure through an award of your Board a new agreement provision over and above that which was agreed to by the parties during contract negotiations.

Accordingly, the Carrier requests that if the claim not be dismissed for lack of jurisdiction, that your Board deny it in its entirety for lack of merit or agreement support.

OPINION OF BOARD: The basic issue in this dispute is the same as that in Award 12530, viz: were the employee's rights violated when the Carrier removed work from his position and had it performed by employees outside the coverage of the Agreement at another station? For the reasons stated in that Award, this claim will also be denied.

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;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May 1964.

DISSENT TO AWARD NO. 12531, DOCKET NO. TE-11496

For the reasons stated in my dissent to Award 12530, I consider Award 12531 to be also erroneous.

J. W. Whitehouse
Labor Member