

Award No. 13653

Docket No. TE-12904

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Boston and Maine Railroad that:

1. Carrier violated and continues to violate the Agreement between the parties when effective April 4, 1960, it declared the position of Ticket Agent & Telegrapher at Portsmouth, New Hampshire abolished and transferred the work of the position to the General Agent (Minor) and to persons not covered by the Agreement.

2. Because of these violations Carrier shall compensate spare employe B. H. Couig in the amount of eight (8) hours' pay for each day April 18 and 19, 1960; and Carrier shall compensate spare employe M. P. Webster in the amount of eight (8) hours' pay for each day April 29, May 2, 3, 4, 6, 10, 18, 19, 23, 24, 25 and 26, 1960.

EMPLOYEES' STATEMENT OF FACTS: The basic Agreement between the parties effective August 1, 1950, with subsequent amendments, is available to your Board and by this reference is made a part hereof.

Portsmouth, New Hampshire is located on the Portland District of the Boston Division of the Railroad, 56.9 rail miles north of Boston, Massachusetts. In addition to being located at the northerly end of the line between Boston and Portsmouth, a line of the railroad also extends westward from Portsmouth to Manchester, New Hampshire, approximately 41 rail miles.

Carrier maintains two offices at Portsmouth. One is the passenger station wherein the ticket office is located and the other the freight station. The two buildings are approximately one block apart. The ticket office contains the telegraph instruments, train dispatchers telephone and a public telephone. The Freight station has for communication a train dispatchers' telephone and a public telephone. The Agent, classified as General Agent (Minor), and covered by the Telegraphers' Agreement (although not a telegrapher) is headquartered at the freight station, at which office the clerical force under his supervision (not covered by the Telegraphers' Agreement) is maintained. The clerical force under the supervision of the agent consists of one cashier, two clerks and one freight handler.

The case then becomes nothing more than use of telephone in lieu of messenger which, we have several times recognized, does not infringe upon the Telegraphers' Agreement." (Emphasis ours.)

ITEM 3.

"When empty bill Car GAEX-100108 BM-DH-PRR.

When empty bill Car NYC-175023 to Carling Brewing, Natick, Mass.

When empty bill Car NYRX-2562 BM-Rott.-NYC.

When empty bill Car NLKX-326 BM-NYC.

When empty bill Car RBNX-80839 BM-NH-PRR.

When SP-672474 empty, advise. Originator — Clerk-Car Distb."

See command regarding Item 1 above, which supports the Respondent's position that this is not a "communication of record."

ITEM 9.

"New Haven Permit 5261 against embargo No. 38 authorized shipment of Scrap. New Haven Permit 5259 against embargo No. 38 authorized shipment of Scrap. Originator — Clerk-Car Distb."

This involves the relaxing of an embargo for defense or government purposes. When an embargo is in force prohibiting the shipping of cars via a certain railroad, permits are granted for the purpose of allowing certain government and other cars to travel for defense or other special purposes. The procedure in handling such a permit is that a Clerk-Car Distributor on the Boston and Maine receives the permit verbally, via telephone, from the road where the embargo exists, requesting that such Car Distributor notify the agency where the car is held to release with routing via their road. In this Item 9, the facts were that the Car Distributor received word accordingly and called on the telephone to Portsmouth requesting that it release the car accordingly, confirming same in writing.

This is no different than a messenger service, which is recognized by your board to be not a "communication of record." See Third Division Awards 7154 and 4516.

The claim is without merit, and it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute arose from the abolishment of the position of Ticket Agent-Telegrapher at the passenger station at Portsmouth, New Hampshire, and the transfer of the work to the General Agent (Minor) in charge of the freight station at Portsmouth and to other persons not subject to the Agreement. Prior to April 4, 1960, Carrier maintained at Portsmouth two offices a block apart, a passenger station and a freight station. The General Agent (Minor) who, although not a telegrapher, is covered by the Telegraphers' Agreement and supervises clerical forces comprising one cashier, two clerks and a freight handler, none of whom are covered by the Agreement. After April 4, Carrier instructed the General Agent (Minor) to be on duty in the ticket office of the passenger station from 10:40 A.M.

at the freight station took telephone messages from Carrier's Boston relay to 11:25 A. M., 45 minutes every day, to handle ticket sales. In addition, clerks office.

The Brotherhood makes claim that Carrier violated the Agreement when it abolished the position without eliminating the work and permitted employees not covered by the Agreement to perform this work. It maintains that telegraphers at Portsmouth have historically and traditionally handled the messages of the type involved in this dispute. It also relies on Article I, the Scope Rule, and Article II (a), the Classification Rule, to support its claims.

In its denial Carrier emphasizes that the decline in passenger traffic prompted the abolishment of the position of Ticket Agent-Telegrapher. It maintains that the small amount of work of selling tickets that remained was properly assigned to the General Agent, an employee covered by the Telegraphers' Agreement. It also contends that the handling of the telephone messages is work that does not belong exclusively to telegraphers and that in the past this type of work has been performed by persons not subject to the Agreement.

On the property, Organization stressed the heavy work burden imposed on the General Agent when he was required to take on the added responsibility of selling tickets daily at the passenger station whereas, in the oral arguments it placed emphasis on the improper abolishment of the position and the improper assignment of the work to the General Agent. The record establishes that discontinuance of the position of Ticket Agent and Telegrapher stemmed from the decline of the work to a point where little remained. The 45 minute daily duty of selling tickets at the passenger station was properly assigned to an employee covered by the Telegraphers' Agreement.

The messages were communications of the nature formerly handled by the telegraphers at the passenger station in Portsmouth. In fact, members of this craft exclusively performed this work at this location. The messages were not just communications of information and instructions but were communications related to the control and records of transportation. Such work is generally regarded as belonging to telegraphers. In supporting its position that there was a past practice of clerks handling the messages of the type in question, Carrier has presented a statement (Carrier's Exhibit B) from the General Agent at Portsmouth. Since this document was not submitted at the time the dispute was handled on the property, it cannot be considered in the determination of this claim. Brotherhood's statement (ORT Exhibit 1) which it presents to prove that there was never a practice in which clerks copied railroad communications of record is also rejected for the same reason. Nevertheless, the record contains ample evidence to lead us to conclude that this work was handled exclusively by telegraphers at the Portsmouth passenger station. There is no doubt that clerks have handled telephone messages for many years as Carrier asserts, but these were not the same type of messages the telegraphers received at the Portsmouth passenger station. This position in no way implies that clerks or other persons outside the Agreement may not use the telephone in connection with their work.

For the reasons presented, we hold that the discontinuance of the position did not violate the contract and the claim in Paragraph 1 is denied. As to the claim for compensation resulting from the improper assignment of the work, we hold that the employees named in Paragraph 2 of the claim receive compensation as requested.

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

The Agreement of the parties was violated.

AWARD

Claim 1 denied and Claim 2 sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1965.