Award No. 14538
Docket No. TE-14036

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

> Carrier violated the provisions of the Telegraphers' Agreement when, effective Friday, June 30, 1961, they removed duties being performed by Claimant J. S. Nichols from Valley Head, Alabama and transferred these duties to an employe of Mr. Cole D. Brown of The Potato Growers Association, Valley Head, Alabama.
>
> Carrier shall compensate Claimant Mrs. J. S. Nochols, agent-telegrapher, Valley Head, Alabama, by payment of one call on each day June 30, July 3, 4, 5 and 6, 1961 and for all subsequent days that the violation is permitted.
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> This is a continuing claim.

EMPLOYES' STATEMENT OF FACTS: Mrs. J. S. Nichols is regularly assigned to the position of Agent-Telegrapher, Valley Head, Alabama, and has an assigned work week of Monday through Sunday, with rest days of Saturday and Sunday. The assigned hours of this position at this one-man station are 8:00 A. M. to 5:00 P. M. with one hour meal period. The position of Agent-Telegrapher has been negotiated with the Telegraphers on the Alabama Great Southern Railroad and is shown at page 98 of the Agreement. For many years or as long as the position has been in existence all of the work at that location has been performed by the Agent-Telegrapher.

The Potato Growers Association, which was a new shipper located at Valley Head, Alabama, shipped carloads of potatoes to various destinations. The Agent-Telegrapher performed the duties in conjunction with such shipments, such as the ordering of cars, issuing bills of lading, waybills, and having the loads moved for the shipper.

Effective June 30, 1961, The Potato Growers Association, in agreement with the Carrier, was permitted to do the billing of carloads shipped by them after the regular assigned hours and on the rest days of the Agent-Telegrapher at Valley Head, Alabama. Special bills of lading for these shipments

In addition, the Chicago Agreement of August 21, 1954 contains the following, identified as Article V, Sections 1 (a) and 3:

> "(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. It not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.
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> 3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retoractively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employe held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient."

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant is the regular and only assigned employe at Carrier's agency at Valley Head, Alabama, a one-man station. Her position is that of Agent-Telegrapher, with assigned hours from 8:00 A. M. to 5:00 P .M. Monday through Friday with rest days on Saturday and Sunday.

The Organization contends that the Carrier violated the provisions of the Telegraphers' Agreement when, effective Friday, June 30, 1961, it removed and transferred some of the duties performed by the Claimant and transferred them to an employe of The Associated Potato Company, whose place of business is at Valley Head, Alabama.

The Carrier denies the contention of the Organization and claims that the work performed, by the employe of the Potato Company, is not the exclusive work of the Claimant and that therefore there cannot be and there is no violation of the Agreement.

There is no dispute as to the material facts in this case.

Commencing in June of 1961, The Associated Potato Company (hereinafter referred to as Potato Company) located in Valley Head, Alabama, depending on weather and market conditions, made carload shipments from Valley Head to various destinations. Whether by agreement between the parties or by request or insistence of the Potato company, the Carrier furnished the Potato Company with a new form of bill of lading. This is not denied by either of the parties to this dispute. The new form of bill of lading contained six copies. An employe of the Potato Company prepared the bill of lading,

and, simultaneously, five additional copies, by means of preassembled forms with onetime carbon paper interleaved. Copy No. 4 is the Waybill. The original bill of lading was returned to the Potato Company, Copy No. 4 was picked up by the train conductor an accompanied the car, the other copies being forwarded to the proper agencies of the Carrier for processing. While the employe of the Potato Company prepared the forms, all other necessary work with reference to the shipment was performed by the Claimant during her regular working hours. This work included the signing of bills of lading, checking the rates, making extensions and preparing revenue bills.

If we find from an examination of the Agreement that this work has been detailed as a part of the Agreement provisions, then of course the Agreement will and must govern. If, however, the Agreement does not specifically control the work assignment, then we look to custom, tradition and past practices on the system of the Carrier. If the work is not assigned under the Agreement, or is not controlled by custom, tradition and past practices, the Carrier has the prerogative and is free to determine the way in which the work and operations are to be assigned, performed and conducted in the interests of economy and efficiency.

In this case the Organization claims and alleges a violation of the Scope Rule of the Agreement.

A reading of the Scope Rule discloses that it is of the general type. It does not define or describe work, but only lists by title the classes of employes covered by the terms and provisions of the Agreement. The work, the basis of this claim, is not specifically mentioned in the Agreement.

This Board has consistently, in interpreting such general type Scope Rules, applied the principle of determining whether or not the work in dispute has been performed solely and exclusively through custom, tradition and past practices on the Carrier's system. We have also held on any number of occasions that the burden of proving such sole and exclusive right through custom, tradition and past practices is on the Organization by requiring it to submit competent supporting evidence to establish any violation of the Agreement. Bare assertions and statements do not constitute evidence. See Awards 14033, 13612, 13741, 13378 and 12685 among others.

We are familiar with the several awards of this Board, starting with Award 602, which stand for the proposition that at a one-man station, the Agent-Telegrapher owns all the station work at that station. An examination of these awards discloses that they are based on the showing that the work was and had been performed exclusively on the Carrier's system by custom, tradition and past practices. We do find several later awards by this Board which reject this contention and hold to the contrary. See Awards 12530, 12991, 12531, 12147 and 11321.

This Board has also on a number of occasions held that the work in this dispute, being of a clerical nature, is not exclusive to the employes covered by the Telegraphers' Agreement. See Awards 14166, 13442, 13324, 12530, 10970.

The Carrier, in support of its position, states:

> ". . . Further that it is a well known fact that many shippers over the entire system regularly prepare their own bills of lading for car

load shipments, and that such work has never been performed exclusively by employes of the telegraphers class or craft, at one-man stations or otherwise. That in the instant situation claimant Nichols is performing all necessary work during her assigned hours, i.e., signing the bills of lading, checking the rates on the shipments, running the extensions and preparing the revenue billing, that it is a prerogative of Management to determine when and how work will be performed, also it is a responsibility of Management to eliminate all unnecessary work and expenses . . ."

The Organization in answer to this statement states:

"We have no dispute with Mr. Moore's statement that many shippers over the system regularly prepare their own bills of lading but we do dispute any statement or inference that shippers over the system prepare and make way bills for shipments."

It is evident from the foregoing that the Organization does not dispute the right of the shipper, over the Carrier's system, to prepare their own bills of lading, but does dispute the right of the shipper and/or its employe to prepare and make the waybills for shipment.

That is the issue in this dispute.

The new form of bill of lading furnished to the Potato Company by the Carrier, in this dispute, contained six copies, all uniform in wording and make up. Copy No. 4 was used as an outbound waybill to cover the movement of the shipment, weight and charges to follow. As heretofore stated, the Organization does not dispute nor deny the right of the Potato Company to prepare its own bills of lading on the form delivered to it by the Carrier, consisting of the six sheets, but claims that sheet No. 4, the waybill, could only be prepared by the Claimant.

A dispute, where the facts were identical and on all fours with the facts in this dispute, has been previously passed upon and decided by this Board, in Award 13215 (Coburn). In that Award, we said as follows:

"The Board finds the evidence of record does not support a finding that the Scope Rule of the Agreement was violated when MFA, the shipper, was permitted to handle the waybilling of outbound carload shipments. The procedure followed made possible the simultaneous production of the bill of lading and weights and charges to follow waybill on a combination form. The result was to elminate some clerical work theretofore done by Carrier's station force at Aurora. The work there having been elminated, manifestly the Scope Rule cannot be held to apply. Nor was there a 'farm-out' as alleged. There was no contract between the Carrier and MFA whereby the work was performed by the latter for a consideration. It was performed by MFA at its insistence, on its own account, and for its sole benefit and convenience."

The parties are in sharp disagreement with reference to the controlling question as to whether or not the disputed work had been solely and exclusively assigned by custom, tradition and past practice to the Organization's employes. We find no competent evidence in the record for resloving these opposing contentions of fact.

We find that the Organization has failed to meet its burden of proving sole and exclusive rights to the performance of this work by custom, tradition and past practice, which it is required and must do when a claim, such as the one before us, is made under the general type Scope Rule which is contained in the Agreement between the parties.

We will deny the Claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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 between the parties was not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1966.

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