Award No. 16951
Docket No. TE-17379

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Soo Line Railroad, that:

CLAIM NO. 1

(a) Carrier violated the Agreement between the parties when, on each of the dates listed herein, one or more members of train crews unloaded into or loaded out of the freight houses at points listed herein, LCL freight and/or express shipments when the Claimants were not on duty.

(b) Carrier shall compensate the employes whose names are listed below on each of the dates set forth a "call" at the rate of the position occupied, in accordance with the time slips filed.

E. J. Nelson, Foxhold, North Dakota, September 1, 7, 8, 13, 14, 16, 20, 22, 1966.

D. A. Tag, Bowbells, North Dakota, September 3, 6, 7, 10, 12, 15, 1966.

E. O. Johnsrud, Dahlen, North Dakota, September 4, 1966.

M. L. Young, Anamoose, North Dakota, September 16, 19, 20, 21, 23, 23, 25, 26, 28, 30, 1966.

G. G. Gillie, Nekoma, North Dakota, September 9, 10, 16, October 7, 1966.

J. R. Reinke, Kramer, North Dakota, August 31, September 10, 10, 13, 15, 23, 24, 26, 27, 28, 29, 1966.

R. L. Munson, Cathay, North Dakota, September 22, 29, 1966.

R. R. Ayers, Velva, North Dakota, September 13, 14, 15, 16, 19, 20, 21, 22, 26, 27, 28, 29, 30, 1966.

D. A. Tag, Bowbells, North Dakota, September 16, 17, 21, 22, 25, 26, 1966.

P. A. Keller, Flaxton, North Dakota, September 6, 7, 8, 10, 13, 15, 16, 22, 26, 29, 1966.

L. A. Embertson, Rolette, North Dakota, September 19, 23, 24, 28, 30, 1966.

J. D. Sundell, Columbus, North Dakota, September 2, 5, 7, 12, 14, 16, 19, 20, 21, 23, 26, 28, 30, 1966.

A. A. Ternes, Kintyre, North Dakota, September 1, 15, 21, 27, 29, 1966.

H. L. Nelson, Kulm, North Dakota, September 3, 5, 10, 10, 11, 17, 24, 24, 25, 29, 1966.

J. M. Coppin, Fredonia, North Dakota, September 3, 10, 11, 24, 29, 1966.

L. J. Mahoney, Ryder, North Dakota, September 5, 22, 30, 1966.

J. A. Schauer, Benedict, North Dakota, September 23, 1966.

D. A. Hamel, Courtenay, North Dakota, September 17, 22, 1966.

R. L. Munson, Cathay, North Dakota, October 11, 1966.

M. L. Young, Anamoose, North Dakota, October 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 1966.

E. O. Johnsrud, Dahlen, North Dakota, October 9, 1966.

L. A. Embertson, Rolette, North Dakota, October 1, 7, 8, 12, 1966.

F. C. Chandler, Whitman, North Dakota, September 18, 19, 1966.

C. G. Thomson, Balfour, North Dakota, September 7, 12, 14, 19, 23, 1966.

D. A. Tag, Bowbells, North Dakota, October 1, 7, 14, 15, 1966.

E. O. Johnsrud, Dahlen, North Dakota, September 18, 25, 28, 1966.

CLAIM NO. 2

(a) Carrier violated the Agreement between the parties when on each of the dates listed herein, one or more members of train crews unloaded into or loaded out of the freight houses at points listed herein, LCL freight and/or express shipments when the Claimants were not on duty.

(b) Carrier shall compensate the employes whose names are listed below on each of the dates set forth a "call" at the rate of the position occupied in accordance with the time slips filed.

J. B. Scheet, Clearbrook, Minnesota, September 14, 17, 26, 28, 1966.

E. H. Larson, Plummer, Minnesota, August 1, 5, 9, 10, 18, 20, 1966.

G. F. Hutchinson, Bemidji, Minnesota, August 13, 20, October 8, 1966.

E. E. Schmidt, Holdingford, Minnesota, September 2, 21, 1966.

L. C. McMillan, Edan Valley, Minnesota, September 27, 1966.

J. G. Scheet, Clearbrook, Minnesota, October 5, 12, 1966.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties effective July 1, 1956, as amended and supplemented, is available to your Board, and by this reference is made a part hereof.

Prior to December 28, 1964, the Brotherhood of Railroad Trainmen had an agreement rule with the Carrier reading as follows:

"RULE 4.

All freight will be placed on station platform regardless of whatever kind it is."

On December 28, 1964, the Carrier and the Brotherhood of Railroad Trainmen entered into an agreement which provided for full attrition in the reduction of third brakemen positions and the elimination or amending of certain rules, including Rule 4.

On January 11, 1965, Superintendent Welton issued the following notice under File No. A-68:

"SOO LINE RAILROAD COMPANY
WESTERN DIVISION
Office of Superintendent

Enderlin, North Dakota
January 11, 1965

A-68

NOTICE NO. 2

ALL CONCERNED:

Effective at once, trainmen and/or baggagemen are instructed to place LCL freight, express, and cream inside depot buildings when unloading such commodities with no agent on duty. They will also place freezeables into a heated portion of the depot.

Agents will place non-freezeable outbound commodities on station truck in freight house for trainmen and/or baggagemen to load and will leave freezeables in a convenient place in a heated portion of the depot when they are accessible.

In the handling of the initial claims it was agreed between the parties that while some 69 one-man agencies were involved, only the first group of claims would be submitted to the Board, with the understanding that Carrier in its submission might make reference to the number of stations involved and the economies to be realized through the handling complained of.

The initial claims were submitted to the Board, docketed as TE-16255, and submissions of the respective parties were exchanged, granting both parties until September 19, 1966, to make answer. On September 15, 1966, Carrier addressed letter to the Executive Secretary of the Third Division, requesting an extension of 30 days in which to reply to the Employes' submission. For some unaccountable reason, said letter was not postmarked until September 20, 1966, and not received until September 21, 1966. While it is the stated policy of the Third Division to grant up to 150 days in which to answer an initial submission, Carrier was debarred from presenting its rebuttal to Employes' submission. Because of this turn of events, effective August 1, 1966, Carrier withdrew its consent to hold similar claims in abeyance to be disposed of in accordance with the Board's findings in Docket TE-16255. Subsequently, it has consented to holding in abeyance a host of claims arising since August 1, 1966, but not necessarily enumerated in Claims No. 1 and No. 2 now before the Board.

Copies of schedule agreement between the parties, effective July 1, 1956, and supplements and amendments thereto, are on file with the Board and are made a part of this record by reference.

OPINION OF BOARD: The primary basis of these claims is the One Man Station Doctrine which holds that all work at a one man station belongs to the agent. In view of some possible erosion of the doctrine resulting from recent decisions, we deem it appropriate to review its history and examine its rationale to determine whether or not it is, or should be, valid.

Award 602, handed down in 1938, is usually cited as the inception of the doctrine. Thus we deal with a principle of 30 years' standing. An examination of Award 602 reflects that Referee Frank M. Swacker's decision justified sustention of the claim on the basis that Claimants were entitled to the disputed work by virtue of the Scope Rule applicable therein, a general rule identical with those which we have construed in hundreds of cases where one man stations were not involved as affording protection to Telegraphers only where they could prove the work had been traditionally and exclusively performed by their craft. We have, therefore, seen two inconsistent doctrines survive side by side for many years. The result has been that, with only the exceptions hereinafter noted, the One Man Station Doctrine as enunciated by Judge Carter in Award 4392 has governed facts such as we confront in the instant case. Referee Carter stated it thusly:

> "This Division has decided many times that station work in one-man stations belongs to the Agent, a position under the Telegraphers' Agreement. It has also been decided that station work required to be performed outside of the assigned hours of the Agent at a one-man station is work which belongs to the Agent. With these principles we are in complete accord."

For twenty years this doctrine stood inviolate. In 1958 it came under a rather oblique attack from Referee Sempliner in Award 8567.

The One Man Station Doctrine then continued another 6 years at which point, in 1964, Referee Seff wrote the decision in Award 12530. This decision was an outright repudiation of the doctrine; yet, in the 4 years ensuing since Award 12530, this Board has yet to find a Referee endorsing Referee Seff's opinion.

A review of the record in Award 12530 leads to the conclusion that Referee Seff applied impeccable logic to a set of facts and a book of rules. He fitted a legalistic template to an agreement and the resultant decision was in conflict with at least 26 years of well-established precedent. And, it is within that precedent that lies the real cogency of the doctrine.

We submit that Award 602 and the long line of decisions which reenforce its doctrine have been tacitly, yet effectively, negotiated into each agreement of the TCU (formerly ORT) as it has been renewed. And thus our task is not simply to interpret a bare set of words (a computer or a first year law student could perform such a task), but to ascertain what those words should have meant to the parties in the light of **their** experience. The records in many cases before this Board reflect that for many years both the carriers and the union have accepted and relied on the doctrine in Award 602, thus giving a stability to their relations in keeping with the purpose of the Railway Labor Act.

We find two Awards subsequent to 12530 which are concerned with the principle of the one-man station. In Award 12695, Referee Hamilton describes the doctrine as "permissive." In that case the facts were that a station had been closed under authority of the Iowa Public Service Commission. The facts therein are clearly distinguishable. In Award 13291, Referee Arnold Zack recognized the continuing validity of the One Man Station Doctrine, and followed it.

We, likewise, recognize the validity of the doctrine. The instant case is a typical one man station claim. The disputed work was undeniably performed by the Agent before the change in procedure; the record indicates without contradiction that claimants had always been called out to perform the disputed work prior to the change that brought about these claims. Under the authority of the many cases following the precedent of Award 602, we hold that the work properly belonged to the complaining craft, and that the Agreement was violated when such work was assigned to persons outside the scope of the Telegraphers' Agreement. The claims are sustained.

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 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 was violated.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of February 1969.

CARRIER MEMBERS' DISSENT TO AWARD NO. 16951, DOCKET TE-17379, and AWARD NO. 16952, DOCKET TE-16255 (Referee David H. Brown)

The so-called "one-man station" doctrine or theory is not supportable by reference to any rule in the Agreement. Beyond that, throughout Carrier's property the subject work has never been performed exclusively by telegraphers.

R. A. DeRossett
C. H. Manoogian
J. R. Mathieu
C. L. Melberg
H. S. Tansley

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.