Award Number 217
Docket Number TE–144

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS-SAN FRANCISCO RAILWAY

DISPUTE.—

"Claim of the General Committee of The Order of Railroad Telegraphers that agents at Frisco, Prosper, Celina, Gunter, and Dorchester (all in Texas) be paid two calls each day that employees not covered by Telegraphers' Schedule were used on Sundays and holidays to perform work assigned to agents on week days."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

An agreement bearing date of May 16, 1928, is in effect between the parties.

Between January 1932 and October 1933, inclusive, agents at Frisco, Prosper, Celina, Gunter, and Dorchester (all in Texas), on the St. Louis, San Francisco and Texas Railway Company, were required to turn their stations over to so-called trainmeeters on Sundays and holidays. The trainmeeters sold tickets and handled baggage, express, and mail. They were paid a monthly salary of around $30.00. On behalf of the agents, it is contended that the employment of the trainmeeters was in violation of the agreement between the parties and that the work which the trainmeeters performed should have been assigned to the agents. This contention requires a consideration of the nature and purpose of the agreement between the parties.

The whole effect of the agreement and the clear meaning of Article I, paragraph (1) is that work of the character described in the agreement and particularly in Article I, paragraph (1) shall be performed by employees under and subject to the agreement. This is the fundamental object and very essence of collective agreements of this nature.[1]

Such being the nature of the agreement, two questions present themselves in this case; the first is: Was the work performed by the trainmeeters of a character described in and covered by the agreement? If the answer is "No", the claim must be denied. But if the answer is "Yes", the second question is: Were the trainmeeters employees within the meaning of the agreement and to whom the agreement could properly be made applicable? If they were not, the agreement was violated because, as has been stated, its whole meaning is that work of the sort covered by the agreement should be performed by employees under the agreement. If, on the other hand, the trainmeeters were employees within the meaning of the agreement to whom work of the sort involved could properly be assigned, the claim could not be sustained because there is no clause

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[1] As was held in Award #351, Docket 768, National Railroad Adjustment Board, First Division, June 4, 1935. See also United States Railroad Labor Board Decision #2455, Docket 2820, May 27, 1924.

in the agreement providing that Sunday work shall belong exclusively to the agents or that they shall have any preferential right to perform it.[2]

First, the work performed by the trainmeeters was work which was regularly assigned to the agents on week days and comprised a substantial if not the principal portion of the duties thus assigned to the agents. The stations in question were one-man stations. In busier stations with two or more employees and a greater subdivision of labor, it may well be that portions of the work here performed by the agents might be properly assigned to clerks or other helpers not governed by the Telegraphers' agreement and that they might in turn properly be assigned to Sunday work. But such a case is not here presented nor are we dealing with a case in which occasional or isolated Sunday jobs may be turned over to some employee not normally handling such jobs on week days[3], nor with the employment of night trainmeeters.

The case before the Board is one in which the Sunday work was regular and recurring and comprised duties—and a large part of the duties—assigned to the agents and covered by the Telegraphers' agreement. It follows that the work fell under the agreement and by the terms of the agreement could only be performed by employees under and subject to the agreement.

Second, were the trainmeeters employees within the meaning of the agreement and to whom the agreement could be applicable? This question cannot be answered by the mere assertion that the trainmeeters were "contractors". They were directly hired and paid by the Carrier and were, therefore, employees in the ordinary meaning of the term. The real question is whether they were employees within the meaning of the agreement; that they were not is indicated by the tenor of the whole agreement and by various provisions of it. Apart from certain clauses relating to temporary additional positions and temporary vacancies which it is conceded are not involved here, the agreement clearly contemplated that employees would be (subject of course to unavoidable fluctuations in business) regular and steady employees working full-time or as nearly full-time as the business would permit. The elaborate provisions regarding promotions and seniority which are among the most important provisions in the agreement were obviously designed for employees of the sort described and not for individuals who would be employed for a few hours once a week on Sundays. Furthermore, the provisions in the agreement regarding Sunday work are so framed as to exclude the possibility that employees of this intermittent character were contemplated.

The agreement covers two types of Sunday work: First, that required on Sunday "within the *regular daily established hours* of the employee affected" (Article II, 9) to be paid for "at the pro rata hourly rate when the entire number of hours *constituting the regular week-day assignment* are worked" (Article II, 10). These provisions clearly do not contemplate the use of employees engaged solely and exclusively for Sunday work. The second type of Sunday work which the agreement provides for is that performed by employees who are "notified or called to work on Sundays"; when they are so notified or called and work "a less number of hours than constitute a day's work *within the limits of the regular week-day assignment*", they shall be paid on a certain overtime basis; and they will not be expected to be available for such work "unless they are notified *before the expiration of their assigned hours on the day previous.*" This second type of Sunday work, therefore, contemplates the special use through a special call of employees with regular week-day assignments. It is not possible to fit the trainmeeters into this category any more than into the preceding category of Sunday work.

We are justified in concluding, therefore, that the agreement as a whole and more particularly in its Sunday provisions did not contemplate and could

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[2] A clause giving certain employees a preferencial right to Sunday work is sometimes inserted in collective agreements. See, for example, the provisions in the Clerks' Agreement described in Award #68, Docket CL–58, National Railroad Adjustment Board, Third Division, July 16, 1935. The absence of such a clause in the agreement now before the Board is significant and it has elsewhere been held that subordinate employees may be assigned, on Sundays, work normally performed by superiors provided they are paid at the higher rate. See Railway Board of Adjustment No. 3, Decisions T–394, T–397, T–403, and T–406 (November 1919).

[3] This was the situation in National Railroad Adjustment Board, Third Division, Award #109, Docket TE–88, Oct. 15, 1935, in which on two occasions a regularly employed yard clerk handled a carload of horses on Sunday.

not be made applicable to intermittent employees hired especially and exclusively for Sunday work.

Since, whatever the situation might be at other than one-man stations, the work here performed by the trainmeeters was work covered by the agreement and since that work should have been performed by employees within the meaning of the agreement to whom the agreement could be applied, and since the trainmeeters were not employees of this sort and could not be brought under the agreement without violating its spirit and without adding language not found in the agreement, it follows that the employment of the trainmeeters was *in violation of the agreement. The only way the work could have been performed* and brought under the agreement was to employ the agents for the Sunday work since they were the only employees available in the localities in question, and the only ones whose duties embraced that particular kind of work.

AWARD

Claim sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary.*

Dated at Chicago, Illinois, this 21st day of March 1936.