

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHICAGO, ROCK ISLAND & PACIFIC
RAILWAY COMPANY**

**THE CHICAGO, ROCK ISLAND & GULF
RAILWAY COMPANY**

(Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "The Chicago, Rock Island and Pacific, and the Chicago, Rock Island and Gulf Railway Company should not have taken the Sunday work off of the agent at Peabody, Kansas, and paid the so-called custodian a lesser rate of pay to perform the agent's work on such days, and in denying the agent this remuneration his monthly earnings are being reduced to this extent. As it is further contended the carrier is violating the agreement with the Telegraphers' Organization since this arrangement was put into effect July 19, 1936, and that such violation should cease immediately and the agent reimbursed for all monetary loss sustained since July 19, 1936."

STATEMENT OF FACTS: In their ex parte submission the employees stated the facts as follows:

"Peabody, Kansas, a station on the Missouri-Kansas (formerly Kansas-St. Louis) Division of the Carrier's lines, is a station listed in the wage scale of the Telegraphers' Agreement with the Carrier. The positions at this point are shown in the schedule as exclusive agent at the freight and passenger station, and three tower-telegraph tricks in a manually operated tower several hundred feet distance south of the station.

"For several years the exclusive agent has been required to report for duty on Sundays for the purpose of taking care of train No. 18 which is due at Peabody at 11:10 A. M., for which he has been paid one call, amounting to two hours at time and one-half, or a minimum of \$2.28 each Sunday. No telegraphing was necessary because the position is an exclusive non-telegraphic agency. All telegraphing is handled by operators in the tower.

"Effective July 19, 1936, the agent was notified that in the future he would not be required to meet train No. 18 on Sundays as the Carrier had arranged to have the night custodian, who is not covered by the Telegraphers' Agreement, meet and take care of this train on Sundays."

An agreement bearing date of January 1, 1928, is in effect between the parties.

"Specific attention is directed to Article 4 (e) of the telegraphers' schedule, which provides that overtime will not be allowed unless overtime tickets are forwarded to the Superintendent within 48 hours from the time service is performed. Also Article 6 (a) provides that if an employe considers himself unjustly treated he shall have a fair and impartial hearing provided he presents his immediate superior officer with a written request for same within five days of the date of unjust treatment; but if the unjust treatment is not of a character which falls within the provisions of Article 6 (a) then Article 6 (h) provides that other grievances will be taken up with the proper officials within thirty days, and unless so taken up redress in such cases will be waived. The Sunday assignment of the agent at Peabody was discontinued July 19, 1936. The first complaint regarding this change was filed with the Superintendent 114 days later or on November 11, 1936. Therefore, the employes are coming before your Board asking that you render an award in their favor when they have so far failed to cite any article of the schedule which has been violated, while on the other hand they have not complied with the schedule in that they failed to avail themselves of the right they had under the contract to call attention to what they now allege was an improper practice."

OPINION OF BOARD: The subject in dispute in this claim of the General Committee of The Order of Railroad Telegraphers is the alleged violation by the Carrier of the existing agreement between the parties, effective January 1, 1928, in the assignment of Sunday work, formerly performed by the Agent at Peabody, Kansas, to a lesser rated employe designated as Custodian, and that the Agent at Peabody be reimbursed by the Carrier for all monetary loss sustained since July 19, 1936, the effective date of the change.

The General Committee submits that the current Telegraphers' Agreement lists among other employes at Peabody, Kansas, an Agent who is located at the freight and passenger station and who performs no telegraph service. Further that such non-telegraph Agent has been assigned for duty on Sundays and holidays for the purpose of taking care of Train No. 18 which was due at Peabody at 11:05 A. M., and for which the Agent has been paid in accordance with the Telegraphers' Agreement. Effective July 19, 1936, the Agent was notified by the Carrier that the Night Custodian, who is not covered by the Telegraphers' Agreement, would in the future meet Train No. 18 and handle the loading and unloading of baggage, mail and express just as the Agent did prior to that date.

The General Committee contend that in displacing the Agent in the manner outlined and reducing his monthly earnings, the Carrier violated the Scope and other rules of the existing agreement between the parties.

The Carrier contends that the employes are resting their contentions more upon certain decisions rendered by this and other Boards rather than upon the rules of the Agreement in effect between the parties. A further contention of the Carrier is that no compensation is due employes unless specifically provided in the agreement and if the agreement does not provide extra or additional compensation for any particular service, or under any particular state of facts, that no extra or additional compensation can be awarded.

In further support of their contentions as to the absence of any rule in the agreement which supports the instant claim, the carrier submits various supplements and interpretations to General Order No. 27 issued by the United States Railroad Administration, together with other decisions and awards as having a bearing on the subject at issue, and submit that this Board's jurisdictional authority in this dispute is limited to consideration of the agreement between this carrier and its Telegraph service employes; and cite paragraphs (e) and (h) of Articles 4 and 6 respectively which places a limitation of 48 hours for the presentation of overtime tickets and 30 days for the presentation of other grievances.

Insofar as the several interpretations and supplements, and decisions and awards that have been submitted by each of the parties are concerned, the Board reaffirms its previous statements that these cases and issues, while bearing some analogy to the present claim, are dissimilar in many respects, and emphasize the statements previously made before this division "that each case should be decided upon its merits and without regard to conditions at other points."

With respect to the application of Articles 4 (e) and 6 (h) of the agreement between the parties and which places limitations of 48 hours on the presentation of overtime tickets and 30 days for the presentation of other grievances, the Board submits that this claim does not represent a grievance in the sense in which the term is used in the agreement, or the protest of an individual, or his representative or representatives, in what he may consider as an unjust charge, a burden, an oppression, a hardship inflicted or a trouble evidenced, this claim is made by the General Committee of The Order of Railroad Telegraphers, one of two parties to the agreement or schedule of rules and rates of pay between the employees and the carrier, and is not a grievance presented by an individual in the sense in which the term is used in Article 6 (h) of the agreement. The claim is a contention of one of the principals of the agreement with the other over the application of rules, rates of pay or conditions whose proper application is a matter of mutual or joint responsibility.

Under these conditions the Board submits that there are no limitations that can be applied to discussions of the proper application of rules, rates or conditions contained in the schedule, or the rules, rates or conditions which they involve, these are subjects to be determined in joint conferences and negotiations; or, failing in this, to be interpreted in the manner provided, and the Board rules that in this instant case Articles 4 (e) and 6 (h) do not apply.

In connection with the contentions of the Carrier that the agreement does not provide extra or additional compensation for any particular service or state of facts, that no compensation is due unless specifically provided in the agreement, and that the agency in dispute is closed on Sundays and holidays, and is not open for the transaction of business, the Board submits that the Agent at Peabody, Kansas, is listed in the Schedule of Rules and Rates of pay in the existing agreement between the parties; that the scope and other rules of the agreement defines both the character of work that is to be rendered by the employees, the conditions under which that work is to be performed, and that apply when the classification or work is changed and by which a less favorable rate of pay or condition of employment is established.

With this and from the evidence submitted in this dispute the Agent at Peabody had been performing the Sunday work at that station over a period of several years and, when the change was made, there was no change in the character of service rendered as between Sunday and the work performed by the Agent on all other days of the week than Sunday; while insofar as the station being closed on Sundays and holidays, and not open for the transaction of business, the Board submits the facts are evidenced that insofar as the meeting and working of Train No. 18 were concerned the station was open on Sunday for the same class or character of service rendered by the Agent as on all other days of the week.

No evidence has been introduced as to the work rendered by the Custodian at night insofar as the meeting of trains was concerned, and that subject is not an issue in this case, the fact is, however, evidenced that in requiring this Custodian to meet Train No. 18 due at 11:05 A. M., on Sundays, following his night duties as Custodian and Janitor, the Carrier clearly evaded the application of the established rules of the agreement by displac-

ing the Agent at Peabody on Sunday from the same class of work performed in connection with the same train during other days of the week and assigning it to an employe not covered by the existing schedule.

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 employe involved in this dispute are respectively carrier and employe 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 violated the terms of the existing agreement between the parties by displacing the Agent from the Sunday service outlined in the claim and substituting a night employe not covered by the agreement to perform work clearly evidenced as coming within the scope of the Telegraphers' Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 15th day of November, 1937.