

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Missouri-Kansas-Texas Lines that, telegrapher R. Z. Sullins, regularly assigned to the position of telegrapher-clerk at Bellemead Yard, shall be paid one day's pay of eight hours each at the schedule rate of 72 cents per hour, under the Guarantee Rule (Article VIII-(r)-) of telegraphers' agreement, for each and every Thursday in each week beginning Thursday, February 7, 1935, to date and thereafter, on which he was not permitted to work nor paid for same, although ready for work but not used."

STATEMENT OF FACTS: The General Committee stated the facts as follows:

"An agreement bearing date August 1, 1928, as to rules and rate of pay is in effect between the parties to this dispute.

"The agreement contains the following guarantee rule under Article VIII-(r):

'Regularly assigned employees will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if less than the required minimum number of hours as per location, except on Sundays and holidays. This paragraph shall not apply where traffic is interrupted or suspended by conditions not within the control of the carrier.'

"The agreement contains the further rule establishing the basic day:

'Article VIII-(a). Except as specified in paragraph (i) eight consecutive hours, exclusive of the meal hours, shall constitute a day's work, except that where two or more shifts are worked, eight (8) consecutive hours, with no allowance for meals shall constitute a day's work.'

"The position of telegrapher-clerk at Bellemead yard is covered by the agreement, it having been last created February 6, 1935, at which time it was bulletined for bids as working Sundays and week-days except Thursday in each week.

"The position was assigned to R. Z. Sullins when created. He was the successful applicant and was regularly assigned.

"Sullins has not been permitted to work on Thursdays since assigned, and has not been paid for that day in any week."

The Carrier stated the facts as follows:

"February 6, 1935, bulletin was issued as follows:

Thursday he has been laid off without pay since that date; and that hereafter be paid in accordance with the guarantee rule of the agreement which we here invoke, for each day he is ready for service but not used, except on Sundays and holidays, while regularly assigned."

POSITION OF CARRIER: "Agreement rules provide:

'ARTICLE I

'(d) Station employes at closed offices or non-telegraph offices shall not be required to handle train orders, block or report trains, receive or forward messages, by telegraph, telephone or mechanical telegraph machines, but if they are used in emergency to perform any of the above service the pay for the agent or telegrapher at that office for the day on which such service is rendered shall be the minimum rate per day for telegraphers as set forth in this agreement plus regular rate. Such employes will be permitted to secure train sights for purpose of marking bulletin boards only.

'(e) No employe other than covered by this Agreement and Train Dispatchers will be permitted to handle train orders at Telegraph or Telephone offices where a telegrapher is employed and is available or can be promptly located except in an emergency, in which case the telegrapher will be paid for the call (and the dispatcher will notify the Superintendent so proper record and allowance will be made).'

'ARTICLE VIII

'(r) Regular assigned employes will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on Sundays and holidays. This paragraph shall not apply in case of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the carrier.'

"It will be observed that train dispatchers are not restricted from performing the service performed by telegraphers. It has been the practice, since before the negotiating of an agreement with the telegraphers, for train dispatchers to perform such duties. The same conditions have existed at other points as outlined in the claim in this case, with the possible exception that in some cases the telegrapher was given Sunday off, or the position of telegrapher abolished entirely. Article 8-(r) provides guarantee only for the days assigned and as Telegrapher Sullins was not assigned to work on Thursday, there is no guarantee for that date.

"The provisions of Article 8-(r) were promulgated by United States Railroad Labor Board Decision No. 757. The M-K-T Lines and AT&SF, both, were parties to that decision. A case similar to this on the AT&SF was passed upon by the United States Railroad Labor Board, decision No. 1242, in which the claims of the employes were denied. Article 8-(r) does not contain any language that can be interpreted as guaranteeing either six or seven days per week nor 306, 313 or 365 days per year. It guarantees only for the days assigned and not then in case of reduction in force nor when traffic is interrupted or suspended by conditions not within control of the carrier."

OPINION OF BOARD: The General Committee of The Order of Railroad Telegraphers contends in this dispute that R. Z. Sullins, a regularly assigned telegrapher-clerk at Bellemead Yard, Bellemead, Texas, shall be paid one day's pay of eight hours each, for each and every Thursday in each week from February 7, 1935, to date and thereafter on which he was not permitted to work, and cite Article VIII, paragraphs (a) and (r) of the existing agreement between the parties, effective August 1, 1928, in support of their contention.

The Carrier contends that Article VIII-(r) does not contain any language that can be interpreted as guaranteeing either six or seven days per week and that its guarantee is only for the days assigned. The Carrier further submits that the position in question was bulletined as a six day position, excluding Thursday, and that a dispatcher being on duty during the hours on Thursday and not being sufficient work to justify two men the telegrapher was given the day off on Thursday, and was worked full time the other days of the week and cite Article I, paragraphs (d) and (e) of the agreement as having a bearing on the subject at issue.

The facts in evidence are that, on February 6, 1935, a bulletin was issued by the Carrier covering an existing vacancy in Bellemead Yard for a telegrapher-clerk, assigned hours 11:00 P. M. to 7:00 A. M., 6 days per week, not working Thursday nights and the position was assigned to R. Z. Sullins, an employe covered by the scope rule of the Telegraphers' Agreement.

An additional feature in this dispute is that during the period and on the Thursdays indicated, a train dispatcher performed the necessary telegrapher's work on the trick in question and according to the Carrier the telegrapher was given the day off on Thursday, the Dispatcher being assigned as a relief Dispatcher at Smithville and Bellemead on five other days of the week.

Article VIII, paragraphs (a) and (r) of the existing agreement are specific in their requirements, qualifications and application. The facts in evidence, however, are that the work and duties of the telegrapher-clerk continued to exist on Thursdays as well as on other nights of the week, and in assigning such work and duties on Thursdays to the Train or relief Dispatcher, an employe not covered by the Telegraphers' Agreement, and displacing the telegrapher-clerk, the Carrier violated the terms and principles of the existing agreement between the parties.

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 displacement of Telegrapher Sullins from his regularly assigned position at Bellemead Yard on Thursdays and under the conditions outlined in the Opinion of the Board constituted a violation of the existing agreement between the parties.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 21st day of December, 1937.