

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE WICHITA UNION TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Wichita Union Terminal Railway:

(1) That, during a temporary shortage of help in the Wichita Telegraph Office, April 27 to June 4, 1945, inclusive, the Carrier changed the assigned hours of the position held by Telegrapher C. R. Rohrback from 3:00 P.M. to 11:00 P.M. to 2:00 P.M. to 10:00 P.M. plus one hour, 10:00 P.M. to 11:00 P.M. overtime daily, merely for the purpose of causing him to absorb one additional hour overtime which would have accrued daily on the regular assignment of hours.

(2) That, Rohrback shall be paid the difference between one hour overtime which he has received and two hours overtime to which he is entitled, for each day between the days named on which he was thus irregularly worked.

EMPLOYES' STATEMENT OF FACTS: For quite some time prior to April 27, 1945, the telegraph force at the Wichita Union Terminal Railway Depot consisted of a Telegraph Manager, and five (5) Telegraphers. Three of the five telegraphers were regularly assigned as Train Order-Telegraphers with assigned hours 7:00 A.M. to 3:00 P.M.—3:00 P.M. to 11:00 P.M. and 11:00 P.M. to 7:00 A.M. continuous twenty-four hour service. The two additional telegraphers were assigned hours on which the heavy load of telegraph business moved, and, of course, the Manager was assigned day hours such as best suited his position.

An agreement bearing an effective date of August 1, 1940, as to rules of working conditions and rates of pay respectively, exists between parties to this dispute.

POSITION OF EMPLOYES: Those rules of the Telegraphers' Agreement on which the Organization relies are next quoted:

SCOPE RULE

"This agreement will govern the employment and compensation of Telegrapher-Clerks, Telephone Operators (except switchboard operators), Towermen, Levermen, Tower and Train Directors, Block Operators, and such other employees as may be shown in the appended wage scale."

Article III

"(d) Employees will not be required to suspend work during regular hours or to absorb overtime."

Article VI

"(a) Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least twenty-four (24) hours' notice to the employees affected."

of this man was changed for the purpose of protecting train order work and at the same time eliminating the working of an excessive number of hours by employes handling telegraph work.

(2) Neither the schedule rules cited by the Organization nor any other schedule rules support the claim.

(3) That the changing of the starting time of Telegrapher Rohrback was in accordance with the requirements of the starting time rule.

(4) That the request for the penalty payment voiced by the Organization is entirely without agreement rules support.

(5) That there is no foundation for the payment which the Organization is requesting on behalf of Telegrapher Rohrback.

(6) That this dispute appears to be an attempt to obtain a rule through the medium of an award of the Adjustment Board.

The Carrier has not been served with nor permitted to see a copy of the employes' submission, consequently it is not informed with respect to the alleged facts, contentions or allegations which the employes' ex parte submission may contain. The Carrier therefore has dealt only with those contentions and allegations presented to it by the employes, and such other matters that in its considered judgment are pertinent to the dispute. The Carrier, however, reserves the right to present evidence in rebuttal of any allegations, facts or contentions that may be made by the employes in their ex parte submission, or to any other submission which the employes may make to your Honorable Board in this case.

OPINION OF BOARD: The claim of Telegrapher C. R. Rohrback covers a period from April 27 to May 19, 1945, and from June 4 to 11, 1945. It arises out of the following situation.

Prior to February 25, 1945, the staff of the Carrier's telegraph office in the Wichita Union Terminal depot consisted of five telegraphers and the manager. Claimant was on the staff and regularly assigned to the work of handling trains or what is referred to in the record as "train order position." His regularly assigned hours were from 3:00 P.M. to 11:00 P.M. On February 25, 1945, one of the telegraphers, Patterson, reported off duty because of illness. He did not return due to the fact that his illness became worse, and subsequently passed away on May 12, 1946. Carrier was unable to replace this man, but up until April 25, 1945, made no changes in the assignment of the telegraphers but carried the load by working some of the men overtime. During this period the record shows that claimant worked one hour before his regularly assigned period, that is from 2:00 P.M. to 3:00 P.M., on the 16th, 17th, 25th and 26th of April and, on three occasions he worked one hour after his regular period, that is 11:00 P.M. to midnight, on April 19, 20 and 21. He was properly paid for these periods under the terms of the agreement.

On April 25th Telegrapher Burns, an elderly wartime volunteer, quit. He did not return to work except for the period from May 20 to June 3rd, inclusive, when he was requested to do so by claimant in order that claimant might take a vacation. Claimant took his vacation during this period.

When Burns quit, the Carrier found it could not replace him as it was impossible to hire qualified men. It then found it necessary to change some assignments in order to cover its work in the best possible manner with its depleted staff. It notified claimant on April 25, 1945, as follows: "Effective April 27th your hours will be 2 P.M. to 10 P.M. with one hour overtime, 10 P.M. to 11 P.M."

Claimant worked these hours, except when on vacation, up until June 12, 1945. On that date Carrier was able to employ additional qualified help and it then assigned claimant to the hours of 3:00 P.M. to 11:00 P.M.

Under this situation it is the claimant's thought that the rules of their effective agreement, particularly Article II (c) and (d), do not permit the Carrier to change the hours of his regularly assigned working period.

Article VI (a) of the effective agreement between the parties provides: "Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least twenty-four (24) hours' notice to the employees affected."

The exigencies of the situation, which made necessary this and other changes in the assignments of the Carrier's telegraphers in the Wichita Union Terminal, came about through the illness of one telegrapher and the quitting of another at a time when it was impossible to replace them. It was, of course, impossible to determine how long this situation would continue.

Rule VI (a) leaves management free to assign hours of duty most consistent with the requirements of the service. This notice was given. We find nothing in the rules of the parties' effective agreement that prohibits or interferes therewith in a situation such as this and we find the Carrier acted within its rights.

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 Employees involved in this dispute are respectively carrier and employees 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 rules of the agreement have not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1947.