

Award No. 4817

Docket No. TE-4858

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Minneapolis & St. Louis Railway Company.

(1) That the Carrier violated and continues to violate the terms of the prevailing Telegraphers' Agreement and those of Mediation Agreement Case A-2070, signed a Chicago, Illinois, on July 13, 1945, when on Saturday, October 11, 1947, and on each Saturday thereafter, it has required and continues to require the regularly assigned incumbent of the agent-telegrapher position at Tara, Iowa, to suspend work on each such Saturday which the Carrier designated as the assigned day of rest for the employe regularly occupying such position and proceeded to relieve him and continues to relieve him with an employe not covered by the prevailing Telegraphers' Agreement and who held and who holds no seniority thereunder; and

(2) That the Carrier shall be required to compensate such employes who have been regularly assigned to the agent-telegrapher position at Tara, Iowa, for eight (8) hours at the time and one-half rate of pay for each Saturday commencing October 11, 1947, and for all subsequent Saturdays thereafter on which they have been or may be wrongfully deprived of work, to which they were and are entitled, by the Carrier's unilateral action in relieving them on their assigned day of rest by an employe not covered by the prevailing Telegraphers' Agreement and who holds no seniority thereunder.

JOINT STATEMENT OF FACTS: The station of Tara, Iowa, a joint station of the Illinois Central Railroad and The Minneapolis & St. Louis Railway Companies, is located six miles west of Fort Dodge, Iowa, on the Third District of The Minneapolis & St. Louis Railway, and the Sioux City and Omaha Divisions of the Illinois Central Railroad.

The station force at Tara consists of a First Trick Agent-Telegrapher and Second and Third Trick Telegraphers, providing continuous telegraph service at that point, the employes performing station and telegraphic service for both The Minneapolis & St. Louis Railway and the Illinois Central Railroad Companies. The three positions are seven day assignments, with a designated weekly rest day for each position.

Employes who occupy the Agent-Telegrapher position at Tara hold seniority on the Telegraphers' Seniority Roster of The Minneapolis & St. Louis Railway Company, this position being shown on page 6 of the current agreement. The telegrapher occupying the Second and Third Trick Telegraphers' positions hold seniority on the Telegraphers' Seniority Roster of the

In the instant claim, if Employees have a valid claim at all, it is for an extra telegrapher on the Minneapolis & St. Louis Telegraphers' seniority roster who has been deprived of work under the existing relief schedule. But, as previously stated, no extra telegrapher has been deprived of work.

It is Carrier's position that the present relief is not improper and therefore employees' claim has no merit.

Carrier believes that no article or rule of either the current Telegraphers' Schedule, effective August 1, 1939, or the Mediation Agreement of July 13, 1945, is being violated, and respectfully requests your Honorable Board to so find.

(Exhibits not reproduced).

OPINION OF BOARD: The Carrier's Agent-Telegrapher at Tara, Iowa, occupies a regularly assigned seven-day position, with Saturdays as his days of rest. On Saturday, October 11, 1947, and each Saturday thereafter, the Carrier relieved the Claimant with an employee of another carrier holding no seniority under the applicable agreement.

In defense of its action the Carrier says the current agreement obligates it to provide the occupants of seven day positions with a rest day, and that such employees have no contractual right to work the position on their rest days. Since no relief or extra telegrapher was available to fill the position on the Agent-Telegrapher's rest day, the Carrier says it did not violate the agreement in the manner set forth in the statement of the claim.

With this contention we cannot agree. In a recent award of this Division, involving the same Organization, Carrier and Agreement, it was specifically held that "work on rest days should be assigned in the first instance to a regularly assigned relief man if there be such, secondly, to an extra man, then if an extra man is not available, to the regular occupant of the position on an overtime basis." Award No. 4728.

It is further asserted on behalf of the Carrier that the station at Tara, Iowa, is operated jointly by the Carrier and the Illinois Central Railroad, the Agent-Telegrapher holding seniority on the Carrier's telegraphers' roster and the second and third trick operators on the I.C. telegraphers' roster. Carrier says that being unable to secure relief or extra telegraphers, it entered into an arrangement whereby the Claimant was relieved on his rest days by the assigned telegrapher that relieved the second and third trick telegraphers. It is conceded that the telegrapher so used for this purpose was an I.C. employee, not covered by the applicable agreement. That this practice on the part of the Carrier is indefensible is conclusively established by the following excerpt from the first sentence of Article 1 of the Carrier's effective agreement with this Organization:

"Any employe performing the duties of . . . Agent-telegrapher . . . shall be considered a Telegrapher within the meaning of this agreement." (Our emphasis)

The same Article, in sub-section (b), specifically lists the position of Agent-Telegrapher at Tara.

On this state of the record we deem it unnecessary to extend this opinion for the purpose of reiterating that the Carrier could not contract out the work involved in this claim to persons not covered by its agreement with the Organization.

Since Claimant did not perform work on his rest days he is not entitled to claim compensation at the punitive rate, but the claim will be sustained on the basis of the rate of pay applicable to the relief position.

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

That both parties to this dispute waived hearing thereon;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 Agreement.

AWARD

Claim sustained as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of March, 1950.