Award No. 4969

Docket No. TE-4822

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD, BUFFALO AND EAST

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East that:

(a) The Carrier has violated and continues to violate the provisions of the Telegraphers' Agreement when and because it unilaterally abolished the work of billing of all shipments which were always handled by the Assistant Agent at New York Mills and required that he submit such billing to an employe covered by another agreement at the distant station of Utica, New York, who performed this agent's work under the piece work system.

(b) In consequence of this violation which the Carrier has entered into and continues to permit, Assistant Agent W. R. Fellows at New York Mills shall now resume his proper billing work that was improperly taken away from New York Mills, and

(c) Assistant Agent W. R. Fellows shall now be paid for time it would have taken to perform the work improperly removed from New York Mills agency and which justly belongs to the agent covered by the Telegraphers' Agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of July 1, 1948, is in evidence, hereinafter referred to as the Telegraphers' Agreement, copies thereof are on file with the National Railroad Adjustment Board.

Mr. W. R. Fellows is the incumbent of the position of Assistant Agent at New York Mills, New York, located on the single track West Shore branch of the Mohawk Division. His regularly assigned hours of duty were from 9:00 A.M. to 6:00 P.M. prior to March 18, 1949. On this date, the Carrier ordered that he work the hours from 7:00 A.M. to 4:00 P.M. Commencing April 11, 1949, the Carrier again changed the hours of the Assistant Agent at New York Mills to 9:00 A.M. to 6:00 P.M. One hour for meal provided.

The Freight Agent at Utica who is located several miles away from New York Mills is also listed as the Agent at New York Mills. The position of Agent at Utica is an appointed one and does not come under any agreement.

that the Assistant Agent is being properly compensated for the job for which he bid, that there has been no violation of the Telegraphers' Agreement, and that the claim is an avaricious attempt to force the Carrier to pay punitive time unnecessarily, and, therefore, asks your Board to deny the claim.

(Exhibit not reproduced.)

OPINION OF BOARD: Claimant is assigned to the position of Assistant Agent at New York Mills, New York. His assigned hours were 9:00 A.M. to 6:00 P.M. prior to March 18, 1949. From that date until April 11, 1949, he worked from 7:00 A.M. to 4:00 P.M. and thereafter worked the hours first assigned. The Carrier maintains a freight office at Utica. It maintains a substation at New York Mills, the latter point being within the city limits of Utica and approximately three miles distant from the Utica freight station. The freight agent at Utica supervises both stations, the claimant being the Assistant Agent at New York Mills station. A clerk-telegrapher was assigned to assist the claimant at New York Mills. Prior to December 8, 1948, the Assistant Agent upon receipt of bills of lading covering outbound shipments, rated, routed and typed the waybills covering such shipments. These bills of lading did not arrive until late in the afternoon with the result that claimant was required to work considerable overtime each month. On December 8, 1948, the Carrier relieved claimant of some of the overtime work by assigning the actual typing of the waybills to a clerk at the Utica freight station. The Organization contends that the removal of this work was violative of Agreement provisions and demands that it be restored to claimant at New York Mills, and that he be paid for the time it would have taken claimant to perform it except for such removal.

We quite agree with the general proposition that the scope rule of the Telegraphers' Agreement includes all work traditionally and customarily performed by telegraphers. We agree also with the oft repeated rule that where some telegraphic work exists, that the telegraphers' assignment may be rounded out with work which ordinarily would be performed by clerks. The typing of waybills is work that is ordinarily performed by clerks and is not the exclusive work of telegraphers. Consequently the typing of waybills in the present case can properly be performed by the Assistant Agent at New York Mills but it is not exclusive telegrapher's work. We think it is entirely proper for a carrier to assign such work to a clerk in order to avoid the payment of overtime when the telegrapher's regular assignment remains as before. It is urged, however, that the work could not be taken from the New York Mills station and assigned to a clerk at Utica freight station. In this connection, we point out that the two stations are under the jurisdiction of the Agent at Utica. They are in the same seniority district. It is work ordinarily performed by clerks. Work that is clerical in character which is in excess of that necessary to round out the assigned hours of a telegrapher (here the Assistant Agent) can properly be assigned to a clerk. We know of no rule that prevents the performance of this work at Utica station. The Carrier could with propriety we think have the waybills delivered at Utica instead of New York Mills if it did not result in the loss of a position under the Telegraphers' Agreement. An employe has no right to perform overtime work as such except where the Agreement expressly provides. When necessary work can be performed only on overtime hours, the senior available employe then has a valid claim to it by virtue of his seniority. But where the carrier can get the work done at straight time rates without violating a provision of the Agreement, it is within its province to do so. It is the function of good management to arrange the work, within the limitations of the collective agreement in the interests of efficiency and economy. We find no violation of the rules in the present case.

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 oral hearing thereon;

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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;

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of July, 1950.