

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pittsburgh and West Virginia Railway that,

(1) The Carrier violated the agreement between the parties when on December 26, 1948, it failed to fill the third trick telegrapher position at West Liberty, Pennsylvania, which position was necessary to the continuous operation of the Carrier.

(2) E. W. Sturges, Sr., and T. A. Neelan, regularly assigned second and first trick telegraphers, respectively, at West Liberty, Pennsylvania, be compensated at the rate of time and one-half for four hours each on December 26, 1948, as a result of this violation.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of November 1, 1936, is in effect between the parties to this dispute. West Liberty is a continuously operated telegraph (telephone), train order and switchtender office, located at the end of double track, where three tricks of eight hours each are regularly assigned covering the twenty-four hour period. The duties embraced by those three positions in question include, the handling of messages, orders, reporting and other communication by telephone and the handling of hand operated switches. They are 7-day positions which are considered necessary to continuous operation. The assignments are distinguished by their starting time, i.e., 8:00 A. M., 4:00 P. M., and 12:00 midnight. At the time this dispute arose there was also a regular relief assignment, the incumbent of which relieved each of the three employes one day each week, however, neither the rest days nor the regular assigned relief employe are directly involved in this issue.

On December 25, 1948, F. L. Burke, the regularly assigned occupant of the third trick, 12:00 midnight to 8:00 A. M., assignment, reported off sick and at 11:55 P. M., of the same date the second trick telegrapher—Sturges, Sr., was notified by the Dispatcher that Burke would not protect his assignment at 12:00 midnight and that the assignment would be blank December 26th.

By message, directed to the crews of trains which were to pass West Liberty during the hours the third trick position was blanked the carrier instructed such crews to handle their own switches.

Claims were filed by the second and first trick telegraphers respectively for pay equal to four hours each at the rate of time and one-half because they were not permitted to fill the third trick assignment. The second trick

The parties hereto have never made the existence of positions dependent upon whether or not they are "necessary to the continuous operation of the Carrier."

Due to the fact that the regular employee in this case was ill and no extra relief employee was available, the job was not filled, and according to our records no work was performed at this location on this trick. There is no guarantee whatever to pay other regularly assigned employees when the incumbent of a position is ill, when no extra employee is available and when the position is not filled.

The Employees now wish to reverse the established practice and intent of the Agreement by seeking an interpretation from your Honorable Board which would, in effect, be a new rule requiring payment **at the rate of time and one-half** to other regularly assigned employees who have completed their own assignments whenever an assigned employee is not available and no extra relief employee is available and the position is not filled. The Agreement does not now require that the Carrier be so penalized.

Changes of practices where no rule exists, or the establishment of new rules, may only be obtained through negotiation between the Employees and the Management, and the Carrier respectfully requests that your Honorable Board so rule. The Carrier respectfully requests that the claim of the Employees herein be denied in its entirety.

OPINION OF BOARD: Three telegrapher positions were assigned around-the-clock at West Liberty, Pennsylvania. On December 26, 1948, the third trick operator reported off sick. The Carrier blanked the position on that day and directed the crews of trains passing West Liberty to handle their own switches. The occupants of the first and second trick positions claim they should have been used four hours each on overtime in filling the third trick position.

The duties of these three around-the-clock positions consist of handling orders, messages, reports and communication of record and the operation of hand thrown switches. All the positions were seven-day positions with a relief man assigned on the rest day of each position. No rest days are here involved and an extra man was not available.

The Carrier contends that the position was not necessary to the continuous operation of the Carrier. We fail to see where it makes any difference if the position was necessary to the continuous operation of the Carrier or not. The occupants of positions requiring Sunday assignments are to be given a rest day and the rest day is required to be assigned. When the rest day is not Sunday, work on Sunday will be paid for at pro rata rate. Article 1, Section 1 (a), Agreement of April 1, 1946. Except as provided in Section 1, Sunday work is paid for at one and one-half times the pro rata rate. Article 1, Section 2, Agreement of April 1, 1946. Claimant's rest day was other than Sunday and he was paid the pro rata rate for Sunday work. Where it appears that a position is assigned under the provisions of a definite rule which contains provisions favorable to the Carrier, the Carrier is obliged to comply with all the provisions of the rule including those which appear non-favorable. While the Carrier may properly assign the position seven days per week and pay the pro rata rate for Sunday work when Sunday is not the rest day, it must also fill the position each day of the week. It follows that if the assigned employee reports off duty for any cause, the Carrier must fill the position in accordance with the obligations it assumed in Section 1. If this were not so, the Carrier could assign the position seven days per week, use the occupant of the position on Sunday at the pro rata rate, blank the relief assignment on any other day of the assignment and defeat the primary purpose of the rule. Such a result was not intended and consequently the position of the Organization is correct. The claim will be sustained at the pro rata rate pursuant to Award 4244, 4571, 4645.

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 Agreement was violated.

AWARD

Claim sustained at pro rata rate.

BY ORDER OF THIRD DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of December, 1950.