Award No. 5283

Docket No. TE-5251

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Central Railroad Company of New Jersey, that

(1) The Carrier violated the provisions of the agreement between the parties when on April 9, 1949, it reduced the position of third trick Towerman at "WF" Tower, Westfield, New Jersey, from a seven to a five-day assignment; and

(2) Ordered the regular assigned occupant of the position to vacate said position, file selection for another position in accordance with his seniority; and

(3) Turn the five-days of work each week at this tower over to extra employes.

(4) In consequence of these violations the Carrier shall now compensate the employe who was improperly removed from the position as third trick Towerman at "WF" Tower for any loss in wages sustained by him, plus travel time and necessary expenses incurred; and

(5) Similar payments of compensation and expenses shall be paid to any other employes improperly displaced or otherwise adversely affected because of the improper reduced work week forced upon the third trick position at "WF" Tower by action and instructions of the Carrier; and

(6) All extra employes assigned by the Carrier to work the above named position less than a full work week commencing April 9, 1949, to date of correction of the violation, shall be paid for a full week as required under the rules, plus travel time and necessary expenses incurred, less any amount earned on any other position.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of June 15, 1944, by and between the parties, is in evidence, hereinafter referred to as the Telegraphers' Agreement; copies thereof are on file with the National Railroad Adjustment Board.

"WF" Tower is an interlocking station located at Westfield, New Jersey on the Central Division of the Carrier.

OPINION OF BOARD: Prior to April 9, 1949, there were three Towermen positions working eight hours each on three tricks around-the-clock service, seven days each week at Westfield, New Jersey.

Commencing April 9, 1949, and continuing through August 31, 1949, the Carrier closed the 1st and 2nd tricks (6 A. M. to 10 P. M.) on Sundays and the 3rd trick (10 P. M. to 6 A. M.) on Saturdays and Sundays.

The Carrier has admitted throughout that the Agreement does not contemplate assignments of less than six days of eight hours each in any work week. Consequently, when only five days' work became necessary, the Carrier abolished the 3rd trick position, advised its incumbent to select in accordance with his seniority, and declared the 3rd trick open to assignment five days per week to extra men. The Organization contends that a regular assigned position under this agreement must remain a six-day position and cannot be abolished until all work of the position disappears. The fact that there was no work for the position on the sixth and seventh days is not challenged.

FIRST. When there is no work of a position to be performed, the position may be abolished. It is settled that this is so, though the disappearance of the work is temporary only, if the duration of the suspension cannot be predetermined, as in the case of inclement weather (Award 4065) and strikes (Awards 3838, 4001 and 4099).

And it is also settled that, when there is no work of a position to be performed, it may be properly abolished, notwithstanding guarantee rules which are more specific than what is before us here (Awards 3838, 4001, 4099 and 4849). The reason for this conclusion is said to be that such guarantees "run to the employe and not to the position", and so the Agreements are considered to be contracts of employment for a definite period only as long as the position remains established (see Awards 4849 and 4731). These, it may be noted, are situations where all, and not merely a part, of the work of the position has disappeared.

SECOND. Here 2/7ths of the work disappeared, and 5/7ths remained. The change of the 3rd trick position from a seven-day regular position to a five-day regular extra position is challenged as being a violation of the admitted understanding that the Agreement contemplates "regular assignments" of not less than 6 days per week.

The essential difficulty arises from what was meant by use of the words "regular" or "regularly" in connection with assignments.

It is the thought of the Organization that "extra employes", as covered by Article 15(b), are exempted from the guarantee of Article 30(a) only when they are used to substitute in a regular assigned position during the incumbent's occasional absences by reason of vacations, holidays, sickness and the like; but that when extra employes are used regularly to perform all of the work short of the sixth day of a former regular assigned position, they may be classed as "regular extra employes" and so become "entitled to the full provisions of the Guarantee Rule".

It is true that Article 15 draws a distinction between "regular extra towermen" and "extra employes" generally. But this is no more than a means of establishing seniority among different kinds of extra men on the extra list. We are unable to take a distinction created for this purpose within the content of Article 15 and carry it over into Article 30 for the purpose of expanding the normal and ordinary meaning of the words "regularly assigned employes" as used in Article 30 to define the beneficiaries of the guarantee. Moreover, Subdivision (b) of Article 30 contains a specific guarantee with respect to certain relief positions. The fact that a specific guarantee was made to relief men, and none to extra men, confirms the conclusion that neither was intended to be covered by Subdivision (a) of Article 30.

We therefore conclude that Article 15 and Article 30 read together do not forbid the regular use of extra men short of a regular six-day assignment.

THIRD. There is no showing whatsoever that there was any real necessity for the continuance of these seven-day positions. There is apparently no controversy about the change of the 1st and 2nd tricks from seven to six-day positions, although implicit in such a change is the loss of overtime or relief positions on the seventh day. None of the discontinued work on the sixth and seventh days has been assigned to others: none remained to be performed. As was said in Award 439 where the Agreement contained an express six-day guarantee:

> "Neither can the Board agree that, under the application of the agreement between the employes and the Carrier, the duties and work of a classified position must entirely disappear before the regular assignment of a position may be discontinued or abolished, as to do so would soon require all employment on the railroads to be regular full-time assignments, would do away with the necessity for or use of extra employes, and would be against the economic operation of the carriers and opposed to the best interests of the carriers, the employes and the public."

When it is established that the work has in fact disappeared, we can see no difference in principle between the situation here and the situation in cases of strikes (Awards 3838, 4001 and 4099), inclement weather (Award 4065), disappearance of all work (Award 4849) and intermittency (Award 439). We find nothing in this Agreement that guarantees the continuance of regular six-day positions when only five days' work in fact remains to be performed.

FOURTH. Paragraphs (1), (2) and (3) of the claim were handled on the property, but the claim filed here was expanded to include also paragraphs (4), (5) and (6). The latter are probably not properly before us (Award 2095), but it is unnecessary to pass on the question in view of the disposition we make of the 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; and

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 20th day of March, 1951.