

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE & OHIO RAILROAD COMPANY

(Eastern & Western Divisions)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile & Ohio Railroad (Eastern & Western Divisions) that:

(1) That Carrier violates the provisions of the Telegraphers' Agreement when it requires first trick operator-clerk at Lincoln Passenger Station to vacate his position during his regularly assigned hours each Saturday to perform work at South Lincoln Interlocking Station without additional compensation, and

(2) W. K. Dunbar shall be compensated at the rate of time and one-half for eight (8) hours for service performed on Saturday, September 10, 1949, his rest day, each as operator-clerk at Lincoln Station and as leverman at South Lincoln Interlocking Station.

(3) Each employe working the position of first trick operator-clerk at Lincoln Passenger Station subsequent to September 10, 1949, who is required to leave that position and perform service at South Lincoln Interlocking Station shall be compensated for eight (8) hours at the time and one-half rate for the service at South Lincoln Interlocking Station in addition to compensation for service performed at Lincoln Passenger Station.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the parties bearing effective date of June 16, 1944, revised as to certain rules effective September 1, 1949, to conform with the Chicago 40-hour week agreement, copy of which has been furnished your Board and by reference is made a part of this Statement of Facts.

The Carrier maintains an office at the Lincoln, Illinois Passenger Station and a separate and distinct office at the South Lincoln, Illinois, interlocking tower. These two offices are approximately one-half mile apart.

In the station at Lincoln, Illinois, there is employed under the agreement one agent's position, assigned hours 8:00 A.M., to 5:00 P.M., daily except Saturdays and Sundays; one operator-clerk's position, assigned hours 7:00 A.M., to 3:00 P.M., daily except Sundays, and one operator-clerk's position, assigned hours 3:00 P.M., to 11:00 P.M., daily except Saturdays and Sundays.

done so long as the work was performed by an employe covered by the scope of the agreement, as is true in the instant dispute.

Here we have a case where a Saturday assignment was certainly not justified as the services required only a few minutes of the time of an employe who was eligible, available and could be spared to perform the services.

Your Board in many awards has held that where the work on a position has disappeared entirely or substantially the Carrier is justified in abolishing the position. The reasoning of your Board in these awards has direct application in the instant dispute and the Carrier is presuming that your Board will be governed by such prior reasoning and Findings of your Board. Extracts from Opinion of your Board in a number of such awards is quoted below:

Award No. 439:

"In the opinion of the Board a Carrier is justified in abolishing a regular full time position or positions and of substituting extra employes to carry on intermittent work of the same class, when and only when the duties of the position fall off to such an extent as to leave nothing for the employe to do during the majority of hours or days of his employment."

Award No. 3680:

"The Carrier can abolish a position when there is no longer any work to be performed. That the parties understood this right is evidenced by rule 10 (a) of their effective agreement."

Award No. 3838:

"A Carrier can abolish a position when there is no longer work to be performed."

Award Nos. 3884 and 3885:

"It is a prerogative of management to abolish a position where the work of the position has disappeared either entirely or substantially."

In respect to the claim of Operator W. K. Dunbar, referred to in item 2 of the Employees' Statement of Claim, the Carrier in its Statement of Facts has admitted that Operator Dunbar is entitled to be paid time and one-half for his total services on September 10, 1949 because this was one of his rest days. The only dispute existing in respect to compensation for Operator Dunbar is the claim of the Employees for an additional day at time and one-half because of operating the interlocking plant. The Carrier denied this claim for the reasons shown hereinbefore.

The claim of the Employees is devoid of any merit because it is not supported by rules of agreement or past practice. Neither is it supported by Awards of your Board. For these reasons, the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 1, 1949, a certain first trick job at Lincoln was manned by a regularly assigned employe six (6) days of each and every week. A goodly portion of the record herein and of the argument at hearing hereof had to do with the matter of whether this job was of the six (6) or seven (7) day variety. The matter is purely academic and not material to this case. Petitioner viewed this matter as being of little importance. This employe was styled "operator-clerk."

At the above time Carrier changed the work days of the regularly assigned holder of such job to five (5), and instead of establishing a regular

assignment to protect the work on the sixth day, an extra man was assigned to this duty. This procedure does not enter into the dispute.

At the same time Respondent changed the work week of a position at South Lincoln manned by a leverman from six (6) days to five (5), and the employe protecting the work on the rest day at Lincoln was ordered in addition to protect the work on the rest day at South Lincoln. The rest day at each place fell on the same day.

It is the last above described act on the part of Carrier that Petitioner complains of. In particular Petitioner avers this act is repugnant to Rules 1, 2, 3, 4, 7, 8, 14, 21 and 29 of the Schedule.

With reference to the employe referred to in part two (2) of the claim, it is admitted he should be compensated as claimed for protecting the work at Lincoln. It is accordingly ordered by the Board that such portion of part two (2) of claim herein as refers to service performed at Lincoln at the time therein alleged be and it is hereby sustained.

The contention one protecting operator-clerk duties may not be assigned the duties pertaining to leverman in addition thereto is overruled. The duties of each mentioned class as a general rule belong exclusively to the Telegraphers' craft and the Schedule expressly states the employe who performs each type of work will be treated as a telegrapher. The rate of compensation each type or combination of types is entitled to is not before the Board. That subject is a matter of negotiation; creation of jobs when the work belongs to telegraphers and is to be performed by telegraphers is not.

We do not think Petitioner is contending a regular relief assignment for the South Lincoln job should have been established but rather that an extra man should have been detailed to protect the work under circumstances similar to the Lincoln job.

It will be noted under Rule 29, Carrier was required to reduce the work week of the regularly assigned holder of each hereinabove mentioned position so as to not exceed five (5) days per week. The rule goes on to refer to the situation where it is not practicable to establish a regular relief assignment extra men may be used. As previously stated the issue here is, must an extra man be detailed to protect the relief work on each job even though an employe qualified under the Schedule and in close proximity to the job is available? We do not think so under the rule controlling. The requirement set out in paragraph four (4) of Rule 29, Sec. 1(e), is met if Carrier establishes the positions necessary to protect the service at points where suspension of service is not possible on the relief day or days. This can only mean Carrier must create positions when the creation of a position is not sufficient to give the required protection under the particular circumstances involved.

The question then is, can one (1) position furnish the required protection? We think so. No deterrent appears by reason of distance, time, ability of the employe to perform both jobs, the respective duties are in the same seniority district and in general it may be said the protection of one (1) job is not endangered during the time the employe is performing the duties of the other position.

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 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 Schedule was violated to the extent indicated in the above and foregoing Opinion.

AWARD

Claim sustained in accordance with the above and foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of May, 1951.