

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Northern Pacific Railway that:

- (1) The Carrier has violated and continues to violate the provisions of the Agreement between the parties when, on Saturdays and Sundays of each week beginning September 3, 1949, it has required employees whose seniority is confined to the Relay Division Seniority District to perform work belonging to the employees at Missoula Yard Telegraph Office on the Seniority District of the Rocky Mountain Division.
- (2) The Carrier shall now be required to restore such work to employees holding seniority on the Rocky Mountain Division roster, and
- (3) Pay the incumbent of each Telegraph position at Missoula Yard Office for each day the transfer of work was made as referred to in paragraph 1 above, eight hours at the rate of pay to which the employee would have been entitled had he been used to perform the work in question.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties effective April 1, 1948, as amended to conform to the Chicago National 40-Hour Week agreement effective September 1, 1949, is in evidence, hereinafter referred to as the Telegraphers' Agreement; copies thereof are on file with the National Railroad Adjustment Board.

Under rules 10, 11, 12, 18, 19, 28, 29 and 90, of the current agreement between the Carrier and the Organization, seniority districts with clearly defined limits are set up.

Missoula, Montana, is a large division terminal on the Northern Pacific Railway located west of the center of the carrier's Rocky Mountain Operating Division.

In addition to the usual division offices—Superintendent, Assistant Superintendent, Trainmasters, Division Traffic Offices (freight and passenger), Traveling Auditor, Roadmasters and Division Mechanical Offices (Master Mechanic, Shop Foremen, etc.),—the carrier maintains two separate and distinct telegraph offices at this terminal identified as "MD" Relay Office and "MA" Yard Office.

4244 and 4467 the penalty rate that an employee deprived of work to which he is entitled to perform by agreement is straight time rate. Should this Division find that the three positions of telegrapher maintained in Missoula Yard Office should have been filled seven days per week and a relief position established to relieve such positions on rest days the occupant of the relief position would have been allowed payment at straight time rate for rest day relief service. Therefore in any view of this case, the claim for payment at time and one-half rate on Saturdays and Sundays cannot be sustained.

The Carrier has shown that handling train orders, messages and reports at Missoula is performed jointly by telegraphers in Missoula Yard Office and in Missoula Relay Office and that there is therefore no violation of the rules of the Telegraphers' Agreement in having telegraphers assigned to Missoula Relay Office handle all train orders, messages and reports on Saturdays and Sundays.

(Exhibits not reproduced.)

OPINION OF BOARD: Details of the factual situation on which this dispute depends appear in the Statement of Facts made by the respective parties in their initial submissions. Based on our own construction of what is to be found there, we shall summarize very briefly such facts as are deemed essential to a proper understanding of our decision.

At Missoula, Montana, the Carrier maintains two separate and distinct telegraph offices identified as "MD" Relay Office and "MA" Yard Office. The two offices are in separate and distinct seniority districts. Employees in the Yard Office hold seniority and rights to positions within the Rocky Mountain Road Division district, while those in the Relay Office accumulate seniority on an entirely different roster, on the Relay Division Seniority District.

Prior to September 1, 1949, the Carrier maintained three telegrapher positions at the "MA" Yard Office, consisting of three shifts to cover the 24-hour period of each day, seven days per week. These positions are listed under the current Agreement in the Rocky Mountain Seniority District. As of September 1, 1949, the date on which the Forty Hour Week Agreement became effective, the Carrier filled these three positions five days per week, Monday through Friday, creating no regular relief position to perform the work remaining thereon Saturday and Sunday, although it is not claimed the work on such days had disappeared or even decreased at the Yard Office, where operations continued as before, seven days per week. Instead, it caused such work, including all its telegraph and train order work, to be performed by telegraphers, and perhaps other employees not covered by the Agreement at the "MD" Relay Office. For our purposes, we shall assume it was all assigned to telegraphers. The practical effect of this action was to blank Saturday and Sunday on the thereto-existing seven-day positions at the Yard Office.

Because of the action here-to-fore described, the Employees filed protest and progressed a claim on the property to the Carrier's highest reviewing authorities without success. Thereupon, they filed the instant claim, in which, as they did on the property, they claim the Carrier has violated provisions of the current Agreement, particularly the Scope Rule and seniority rules, by requiring employees whose seniority is confined to the Relay Division Seniority District to perform work belonging to employees at the Yard Telegraph Office on the Rocky Mountain Division Seniority District.

At this point, in the interest of clarity, it should perhaps be pointed out that the work of telegraphers at both offices is practically the same and, so far as is here material, consists of handling train orders, sending and receiving messages and reports by Morse telegraph. It should also be noted, notwithstanding the Carrier's specious arguments it was due to the volume of business, that effective August 18, 1950, after the involved claim had finally been denied on the property, the Carrier restored the major portion of the

work in question by establishing a rest day relief assignment at the Yard Office to perform the work necessary on all three involved positions on Saturday and on the first and second shift positions on Sunday.

Upon extended review of a long and tedious record, we are convinced that the crux of everything raised therein is whether under the existing Agreement work can now be transferred from one seniority district to another where, as here, the parties have included within its provisions almost every seniority rule known to and considered by this Board since its creation. In one breath the Carrier argues there are no rules of the Agreement requiring that work be assigned to positions in the seniority district where located or precluding its unilateral transfer from one seniority district to another and in the next appears to contend that even so, the employees no longer have the right to insist upon those rights by reason of provisions of the Forty Hour Week Agreement. For that reason, we deem it necessary to give consideration to the situation existing before and after its effective date and the effective date of the revised rules agreement, in which most of its provisions are incorporated.

The Employees rely principally upon the Scope Rule (Rule 1), and Rules 10 (a), 11, 14, 15, 19 (a), 26, 28 (a), 29 (a), 39 (a), all dealing with seniority rights. These rules will all be found in the record of this case and we are not disposed to labor them. It suffices to say, as we have heretofore indicated, they are sufficiently comprehensive to bring the employees within the principles announced in the Awards to which we are about to refer.

Turning to Awards of this Division dealing with alleged violations of comparable seniority rules prior to the effective date of the Forty Hour Week Agreement, under conditions and circumstances similar to those here involved, there can be no question regarding our construction of the agreements therein involved. Almost without exception they point to the fact seniority is a valuable property right which would be nullified if such agreements were to be construed as permitting the transfer of work from one seniority district to another without negotiation and hold that work thus removed violates the seniority rights of employees in the district from whence it is taken and hence result in a violation of the Agreement. For just a few of our decisions to that effect, see Awards Nos. 1685, 4076, 4653, 4698 and 4987. While not in question it should perhaps be stated the same rule prevails with respect to assignment of work to (1) other employees not covered by the Agreement (Awards Nos. 4145, 5014 and 5110), (2) employees having no seniority rights (Awards Nos. 3860 and 3862), and (3) even to an employee on leave of absence (Award No. 4307). A review of our Awards dealing with alleged violations of seniority rules occurring subsequent to the effective date of the Forty Hour Week Agreement discloses that this Division of the Board has determined the negotiation of such agreement has resulted in no diminution of employees' rights under such rules and has continued to adhere to the principles announced in the Awards heretofore cited. See Awards Nos. 5078, 5117, 5195, 5240 and 5333.

Indeed, in No. 5240, supra, we said:

"We find nothing in the current Agreement or the revision thereof, effective September 1, 1949, that permits or authorizes work to be done by one without established seniority when there are those with established seniority available and willing to do the work."

See also, No. 5333, where the following statement appears:

"Clearly, under the provisions of the above quoted rule the parties contemplated that employees assigned to relief positions would be of the same seniority class as the employees they relieve. Here, the relieving employee (Assistant Signal Maintainer) held no seniority in the higher class. It was, therefore, improper to assign him on a continuing basis, as here, to relieve the Signal Maintainer on the latter's rest day."

Confirmation of the fact the Awards last cited are in accord with the spirit and intent of the Forty Hour Week Agreement is to be found in Section 1, Paragraph (e) (2nd paragraph), Section 1, Paragraph g (1), and Section 2, Paragraph (b) of Rule 79 of the current Agreement as revised effective September 1, 1949, to conform to provisions of that contract. Resort to such rules reveals they definitely contemplate that the regular relief assignments to be created in compliance with the Forty Hour Week Agreement are to be assigned to employees of the same class in the same seniority district.

Obviously, anticipating conclusions such as have been heretofore announced the Carrier insists that employees assigned to the "MA" Yard Office handle train orders, messages and reports in conjunction with those who handle similar work in the "MD" Relay Office. We do not think the record supports this contention. It is true employees at both offices handle the same kind of work. However, as we read it, they handle such work just as other offices do that are many miles apart. Moreover, refutation of this claim appears in the definitely drawn seniority lines, to which we have referred, also in the Carrier's admission that prior to the blanking of their Saturday and Sunday work, all three of the involved positions were filled seven days per week.

Based on what has been heretofore related we conclude, since the Carrier did not establish regular relief assignments on the involved positions on Saturdays and Sundays or use extra men where this was not practicable in the manner contemplated by Rules 79 (1) (e) and 79 (2) (b), respectively, that the work belonged to the regularly assigned incumbents of such positions and that its failure to assign them thereto resulted in a violation of the seniority rules of the Agreement. This conclusion it should be added is consistent with and supported by Award No. 5271. It necessarily follows Claims 1 and 2 must be sustained. Since Claimants did not perform work on their rest days they are not entitled to compensation at the punitive rate. Therefore, Claim 3 is sustained at the pro rata rate on all positions involved up to and including August 17, 1950, reparation on the third shift position on Sundays to continue until the violation is corrected in conformity with existing provisions of the Agreement.

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 Carrier violated the Agreement.

AWARD

Claims 1 and 2 sustained. Claim 3 sustained in part and as indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 6th day of September, 1951.