

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILROAD
COMPANY (Western Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Panhandle and Santa Fe Railway, that

1. The Carrier violated the terms of the agreement between the parties when it failed to call W. L. Sherwood, Agent-Telegrapher at Panhandle, Texas, assigned hours 8:30 A. M. to 4:30 P. M., to perform the service required on his position Sunday, August 24, 1947, instead of calling the telegrapher-clerk, hours 10:15 P. M. to 6:15 A. M., to perform such service.
2. Because of its failure to call Agent-Telegrapher W. L. Sherwood to perform the service required on his position on Sunday, August 24, 1947, the Carrier shall compensate him in accordance with Section 2 of Mediation Agreement A-2070.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement as to rules and rates of pay, bearing effective date of December 1, 1938, supplemented by Mediation Agreement Case A-2070 of March 1, 1945, in effect between the parties to this dispute.

On Sunday August 24, 1947, the day on which the cause of this dispute arose the assignments under the Agreement at Panhandle, Texas were as follows:

Agent-Telegrapher hours 8:30 A. M. to 4:30 P. M., Mondays through Saturdays. Sunday as rest day.

Telegrapher-clerk hours 10:15 P. M. to 6:15 A. M., seven days per week.

On the date in question, Train No. 2, which is due at Panhandle at 5:40 A. M., was late and did not arrive until 10:10 A. M. The Carrier called the telegrapher-clerk to meet this train and handle mail, baggage and express and perform other duties in connection with the working of said train. The service so required was within the regular week-day assignment of the agent-telegrapher.

A claim was filed by the agent-telegrapher for "call" under the provisions of Mediation Agreement Case A-2070 because he was not called to

OPINION OF BOARD: Claim is here made under Mediation Agreement A-2070 account of Respondent having, at 10:10 A.M. on Sunday, August 24, 1947, directed Telegrapher-Clerk to perform service in connection with Train No. 2, Panhandle, Texas.

The position of Telegrapher-Clerk is a seven-day position, assigned hours 10:15 P.M. to 6:15 A.M. The position of Agent-Telegrapher is a six-day position with Sunday a rest day and assigned hours 8:30 A.M. to 4:30 P.M.

The Organization asserts that the service so performed was of the nature and type required of the Agent-Telegrapher and within the regular week day assignment of the position; thus, any work arising on Sunday, as here, within the hours of the week day assignment, belongs exclusively to the occupant of the position.

The Respondent contends that this claim should be denied on one or all of the following grounds:

(1) That the Organization has been dilatory (almost three years having elapsed) in bringing this dispute to the Board.

(2) That the claim as presently constituted and presented to the Board was not handled or discussed on the property, and

(3) That Carrier has the right to call any employe within the Scope of the Agreement and further that the work in question was ordinarily performed by the Telegrapher-Clerk.

While the Railway Labor Act established machinery for the settlement of grievances arising from the interpretation and application of collective bargaining agreements covering working conditions, rates of pay, etc., no limitation exists under the Act as to the time disputes may be brought to this Board. The currently effective agreement contains no such limitation.

It is true that this Board has in the past denied claims because of the lapse of time between their final disposition on the property and presentment here. Awards 1608, 4941, 4943. Likewise this Board has considered many aged claims on their respective merits and have declined to deny the claims solely on the grounds of dilatory handling and/or to apply the doctrine of laches and estoppel. Awards 2925, 4039, 4964. An examination of these awards and others indicates that each case has stood or fallen on its merits, or lack thereof, on a case by case basis.

Pursuing this course there exists, the Board finds, no facts or circumstances that justify the application of the doctrine of laches or estoppel here.

In regard to the Respondent's contention that the claim before the Board is predicated on different rules or on other grounds than were asserted on the property, this Board has held on numerous occasions that a claim, which may be clearly identified as springing from the grievance, as originally presented on the property, will be considered here, even though other rules or provisions of the Agreement are brought into play.

Concerning the propriety of assigning work as was done here, this Board has repeatedly held that work on rest days should be assigned to, first, the regularly assigned relief man, if any; second, the extra man, if any, and available, and, third, this regular occupant of the position. Awards 4775, 4815, 4817, 4883, 5177.

There exists no justification for departing from cited precedents.

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 Employee involved in this dispute are respectively Carrier and Employee 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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of May, 1952.