

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, 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 violated the terms of the Telegraphers' Agreement each Saturday and Sunday, beginning September 3 and continuing until December 9, 1949, when it transferred work from the Yakima Yard Telegraph Office to the Yakima Depot Telegraph Office and permitted or required employees not coming under the Scope of the Agreement to handle train orders and other forms of communications service at Yakima Yard Telegraph Office, and

(2) In consequence of this violation, the Carrier shall pay the senior idle extra employe on the seniority district, who had not worked 40 hours during the week, for eight (8) hours at pro rata rate on each Saturday and Sunday between the dates shown in paragraph 1 above, or

(3) If no extra employes available, then the Carrier shall pay Telegraphers A. F. Reitzel, H. A. Morris and W. H. Decker, who were the regular incumbents of the three telegraph positions at Yakima Yard Telegraph Office, a day's pay of eight (8) hours at the rate of time and one-half for work denied each Saturday and Sunday between the dates shown in this claim.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of April 1, 1948, as amended 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.

Yakima Yard Telegraph Office is located in the freight yard approximately one mile east from the Yakima, Washington Passenger Depot. Yakima is the eastern terminus of the Tacoma Division (East).

Prior to September 1, 1949 there were three Telegraphers on duty at Yakima Yard Telegraph Office covering around the clock telegraph service on three eight hour shifts. These positions worked seven days each week. The incumbent of each position was relieved one day a week by a regular relief employe.

OPINION OF BOARD: This claim arises out of the manner in which Carrier handled certain of its Telegraphers' duties, primarily train orders, at Yakima, Washington, on Saturdays and Sundays between September 3 and December 9, 1949, inclusive. At Yakima Carrier has a Yard Telegraph Office located in its freight terminal facilities where the Telegraphers on duty handle train order and messages in connection with freight train movements in and out of the Terminal. It also has a Telegraph Office in its Passenger Depot at Yakima which is located about a mile west of the Yard Office. The Telegraphers on duty at the Depot Office are primarily engaged in handling train orders and messages in connection with passenger train movements but have, from time to time, done some of this same type of work in connection with freight train movements. It is apparent, from the foregoing, that Telegraphers on duty at these two facilities do the same class of work. Both facilities are in the same seniority district.

Prior to September 1, 1949 Carrier had Telegraphers on duty at the Yard Office on an around-the-clock basis, seven days per week. After September 1, 1949, the effective date of the parties' Agreement adopting the 40-hour week, the Telegraphers in the Yard Office were assigned a work week of Monday through Friday, the office being closed on Saturdays and Sundays. Telegraphers' duties at the Yard Office remaining to be performed on Saturdays and Sundays, which were substantial, were transferred after September 1, 1949 to the Depot Office and assigned to and performed by the Telegraphers on duty there. It should here be stated that the Telegrapher forces on duty at the Depot Office, before September 1, 1949, were on a seven-day around-the-clock basis and continued on the same basis thereafter. As of December 10, 1949, the forces at the Yard Office were again placed on a seven-day around-the-clock basis. Thereafter this work remained at the Yard Office.

Two bases are set out as supporting the claim. First is that Carrier violated the Agreement when, on Saturdays and Sundays between September 3 and December 9, 1949, inclusive, it transferred Telegraphers' duties from the Yard Office to the Depot Office and assigned it to and had it performed by the Telegraphers on duty there. Second is that after it had done so it permitted or required employees not covered by the Telegraphers' Agreement to perform part of the work transferred, that is, it permitted such employees to handle train orders, and other forms of communication, from the Depot Office to the Yard Office or to those to whom the orders were addressed.

The parties adopted, effective September 1, 1949, the 40-hour week. It appears as Rule 79. We are here primarily concerned with Section 1 (a), (d) and (e) thereof. Answering some of the contentions of the Organization we will first discuss Carrier's rights, under the provisions of the 40-Hour Week Agreement, which these parties have adopted, as to rest days of employees in seven-day services and the performance of work that it finds necessary to have performed thereon. The duties herein involved are seven-day services.

Under the provisions of the 40-Hour Week Agreement the assignment of relief employees is not a condition precedent to the establishment of seven-day positions. Relief assignments are only required to be made when there is work that it is necessary for Carrier to have performed by relief on the rest days thereof. If all the work can be efficiently performed by staggering the work week of employees regularly assigned thereto the necessity for relief assignments on rest days does not exist. In other words Carrier may, in accordance with its operational requirements, stagger the work week assignments of employees regularly assigned to the same class of seven-day services so that the rest days of some will coincide with the work days of others and thus make it possible for the regular employees to do all the work necessary to have performed on those days without the necessity of any relief. See Awards 5545, 5555, 5912, 6075 and 6184 of this Division and 1528, 1599 and 1644 of the Second Division.

But this change was not intended to nor does the language used authorize and permit the transferring of work on rest days of seven-day positions from one facility to another at a point, or from one point to another, although in the same seniority district, so what was, in fact, being performed by the employees regularly assigned thereto at any facility or point as seven-day services becomes five-day services.

As stated in Award 5810 of this Division:

"The Carrier may, of course, under certain circumstances, abolish a position and transfer the remaining work to others, even to employees at another station in some cases. But the rules as interpreted by this Board do not permit a seven-day position to be reduced to six by allowing the work remaining to be performed on the seventh day to be done by an employee at another station. * * *

To authorize such transfer would destroy the purpose of the rules as they relate to and provide for the performance of seven-day work. It should be understood that if Carrier can, in fact, reduce what has been seven-day services to five and thereby meet its operational requirements it may do so but it cannot do so by transferring the work to be performed on the rest days thereof to another facility or point and there have it performed by employees on duty even though such employees are of the same class and in the same seniority district.

The question presented by the second phase of the claim is based on the fact that employees, not covered by the Telegraphers' Agreement, carried and delivered train orders on Saturdays and Sundays from the Passenger Depot Office to the freight train crews to which they were addressed, it being the Organization's contention that personal delivery thereof to the addressees therein is exclusively the work of Telegraphers. This presents an issue upon which this Division has not been entirely consistent in its holdings, especially when the Agreement involved has not contained a rule specifically relating thereto. Since we had found that Carrier should not have transferred this work on Saturdays and Sundays, rest days of the Telegraphers on duty in the Yard Office, from the Yard Office to the Depot Office, and since the practice of doing so was discontinued as of December 10, 1949, we think it would serve no useful purpose to again discuss this oft discussed issue.

Reference is made in the docket to the fact that Rule 60 of the parties' Agreement was not complied with on the property in making the claim. We find this contention to be without merit. In any event we think the following, quoted in Award 6167 from Award 4821, applicable:

"We think the correct procedure is to permit the filing of general claims where the question at issue operates uniformly upon a class of employees that is readily determinable. There is no reason why the work of this Board should not be so expedited. Technical procedures are not contemplated. The policing of an Agreement ought not to be made unnecessarily difficult by requiring the filing of a multitude of claims when the disposition of a single issue decides them all. The Organization is authorized to represent the employees and where no prejudice arises out of group handling, we think it is entirely proper."

Claim (3) is made on the basis of time and one-half. We find, if it should be determined that the claimants therein named are entitled to be compensated, that they shall be paid on a pro rata basis. See Awards 4244, 4728, 4815 and 5437 of this Division.

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 Carrier violated the Agreement.

Claims 1, 2 and 3 sustained as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1953.

DISSENT TO AWARD NO. 6212—DOCKET NO. TE-6166

The facts in this docket are not in dispute, and have been correctly stated by the Referee in his Opinion. They are that this Carrier maintained two offices or facilities, manned by telegraphers, in the same seniority district. The offices were about one mile apart and the work performed in both offices was identical. On rest days of the employees at one facility the work was performed by employees covered by the same agreement and in the same seniority district, at the other office, under a staggered work week arrangement.

The Referee, after correctly stating the principle that the Carriers have the right to perform all necessary work by staggering work weeks, without the necessity of establishing relief assignments, sustained a claim that the transfer of work from one facility to another was improper. Because some of the language which was used by the Referee in reaching this conclusion leaves some doubt as to whether the Award intends to hold, on one hand that the transfer of work in question was improper under the basic agreement or, on the other hand, was prohibited by the 40-Hour Week Agreement, the Carrier Members desire to point out certain important considerations.

Questions of seniority and the general right of employees to perform work, including the bulletin, bidding, displacement and assignment rules of the Telegraphers' contract, are matters which are provided for by the basic rule of that agreement. In this case, as in others, these rules long predated the 40-Hour Week Agreement of September, 1949, having in most cases been in the contracts since the early 1920's. These basic rules were in no way altered or modified by anything contained in the 40-Hour Week Agreement. It did not change any existing rules having to do with the right of the Carrier to transfer work from one point to another.

In all probability the Referee recognized this fact and intended by his Award to hold that the basic agreement prevented the transfer of work in question. The award which he cited for his authority (No. 5810) was rendered on that basis. The claim in that case was for a period of time prior to the date when the 40-hour week became effective and was rendered upon a finding that the basic contract on the Carrier involved therein did not permit employees at one facility to perform work at another facility $2\frac{1}{2}$ miles distant in the same seniority district. Opposed to this there are many awards

where this same question has been raised under basic rules of other agreements where a different result has obtained. In Award 4053, for example, this Board approved the transfer of work to stations 17 miles apart under a basic agreement between the Telegraphers and a Carrier.

However, if the Award was intended to mean that the 40-Hour Week Agreement **itself** imposes restrictions upon the transfer of work from one point to another, then such a conclusion is erroneous.

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ R. M. Butler

/s/ W. H. Castle

/s/ E. T. Horsley