

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
BOSTON AND MAINE RAILROAD**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Boston and Maine Railroad that:

1. The Carrier violated the provisions of the Telegraphers' Agreement when and because on Sundays, September 16, 23, 30, October 7, 14, 21, 28, November 4, 11, 18, 25, December 2, 1951, and each Sunday thereafter to January 19, 1952 (when the Sunday assignment was made to conform with the week-day assignment) it required the incumbent of the second trick ticket agent-telegrapher position at Newburyport to begin and end the Sunday assignment at times later than the week-day assignment; and

2. In consequence thereof the Carrier shall now additionally pay the then incumbent of the position overtime on the minute basis on each of said Sundays that the assignment extended beyond the ending of the week-day assignment.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of August 1, 1950, by and between the parties and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Carrier assigned the position in question to work 1:00 P.M. to 9:00 P.M. Monday through Saturday and 2:00 P.M. to 10:00 P.M. on Sundays.

By letter November 16, 1951, Local Chairman Brill protested this irregular assignment, but did not file a money claim until December 7, 1951, after Chief Train Dispatcher Morrill had declared by letter November 27, 1951, that he saw "no violation of Article 5 at Newburyport". The claim, a continuing one, was timely appealed and in due time denied.

Meanwhile the Organization learned there were other positions which had been given improper Sunday assignments by Management, hence on November 21, 1951, a blanket protest was lodged with the Carrier. The violations were not corrected, therefore, in due time money claims were filed. This paragraph for the record only since these latter findings are being separately handled.

POSITION OF EMPLOYES: History is pertinent to this dispute. The United States Railroad Labor Board, acting on the authority given it by law, on March 3, 1922, issued its Decision No. 757 to become effective March

Carrier has shown above that the instant claim was declined and the declination accepted by the Order of Railroad Telegraphers through its General Chairman. Carrier has further shown that the present Starting Time Rule has remained unchanged through the negotiation of four (4) agreements over a period of more than twenty-five (25) years. A different starting time on Sunday than on weekdays has been included in many assignments on this property, without complaint, claim, or protest, for many, many years and the application of the present Starting Time Rule has been consistent and accepted over the years.

The Findings of Referee Livingston Smith in Award No. 15850, First Division, contain the following, which seems particularly pertinent here:

"This Board will not, in the absence of more compelling reasons than are here present, disturb or vacate that which the parties have demonstrated as being their construction, interpretation, and application of a rule."

The claim should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The facts in this case are not in dispute and the controversy arises relative to an understanding between the parties on the programming of Sunday assignments. The rules relied on by the respective parties are set out in the record, together with citation of awards alleged to be in point here.

Article 5, entitled "Starting Time," provides in (a) thereof:

"Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least thirty-six (36) hours' notice to the employees affected."

Carrier directed a letter to the then General Chairman, under date of July 21, 1950, reading as follows:

"As you know, when the new Telegraphers' schedule was executed it was agreed that I would give you a list of those stations where the Sunday starting time is different from starting time on other days, and that we would then meet to discuss the question as to whether or not any changes would be necessary.

"As it is doubtful whether I will have those lists before August first, I suggest we agree to leave starting times as they are at present until such time as the lists are completed and we have had a chance to confer on it.

"If this meets with your approval, will you please sign the enclosed carbon and return to me."

The General Chairman accepted this proposal and on or about August 2, 1950, the requested lists were furnished.

The record fails to show that any such proposed conference was ever held and General Chairman Rockwood died early in October of that year.

Respondent Carrier contends that for many years there were numerous assignments which had a different starting time on Sundays than on weekdays. The controversy here is that different starting times were necessary on Sundays than on week-days in certain positions and that, therefore, the changes made in the starting times for some assignments were made on Sundays. It is understood by all concerned that as long as the starting time on week-days and Sundays remained fixed and uniform, there was no violation of Article 5(a).

It is also urged that Petitioner is here seeking an award to abrogate a clear understanding with a line of General Chairmen (several succeeded the late General Chairman Rockwood), respecting the application of starting time rule on Sunday assignments. Also, that past practice is controlling in this situation, and referring to letter of October 24, 1944, on negotiations relative to an interpretation that Article 5(a) was agreed to be subject to change by not over two (2) hours without violating the Agreement or justifying a claim for call or overtime.

By reason of the facts as shown in this record, we feel that this case should be remanded for further consideration on the property. It may well be, as Carrier contends, that the arrangement with the late General Chairman Rockwood was consummated; however, the record fails to disclose evidence of that fact. Therefore, on this record, further consideration may bring such consummated agreement to light which could settle this controversy. Otherwise, the parties through negotiations could clear up the misunderstanding to the satisfaction of all concerned by such conference.

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 hearing thereon;

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

Case remanded for further consideration on the property in accordance with Opinion.

AWARD

Case remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.