Award No. 6644
Docket No. TE-6630

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE LONG ISLAND RAIL ROAD COMPANY, Debtor
WM. WYER, Trustee

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Long Island Rail Road (David E. Smucker and Wm. Wyer, Trustees) that:

(1) The Carrier violated and continues to violate the provisions of the agreement between the parties when it requires or permits a person holding no rights under the scope of the said agreement at Brentwood, Long Island, New York, to perform work belonging to and heretofore performed by the agent at this one-man station; and

(2) If the Carrier elects to continue the performance of this work at Brentwood it shall be performed by and be assigned to the agent at this station coming under the agreement, in accordance with the rules of said agreement; and

(3) In consequence of the violation the agent at Brentwood shall be paid an amount equal to a "call" each Saturday, Sunday and holiday commencing on or about December 29, 1951, that he has not been called out to perform the work in question.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties bearing effective date of June 1, 1945, as amended to provide for the 40-hour week, September 1, 1945; hereinafter referred to as the Telegraphers' Agreement.

Brentwood, Long Island, N. Y., is a one-man station, located 42.8 miles from New York City. The station is open, with an agent on duty five days each week from 6:35 A. M. to 3:35 P. M. Although the station is considered closed each Saturday and Sunday (rest days), as well as certain holidays, the station waiting room is kept open for the convenience of passengers using the station on such days.

Prior to December 1951, Agent A. F. Morgenweck, the claimant in this case, who has worked at Brentwood station for the past 27 years, was always required by the Carrier to report at the station each Saturday, Sunday and holidays during the winter months between November 1st and mid-April, to take care of the steam heat boiler located in the basement, and see that the station was in proper condition for the convenience of the traveling public using the station on these days. For this service Agent Morgenweck was allowed a "call" payment by the Carrier under the terms of the Agreement.

3. That since the work upon which this claim is predicated does accrue exclusively to Agents, this Carrier was privileged to have it performed by whomsoever it pleased—see Award 4992 (Carter) this Division.

4. That in view of the facts presented, it would be necessary for your Honorable Board to write a new and different Scope Rules not previously agreed to by the parties, a prerogative this Honorable Board does not possess. See Award 4839 this Division.

In view of the facts presented and for the reasons stated above, this claim should be denied.

OPINION OF BOARD: Claimant, as agent of a one-man station at Brentwood, New York, makes claim for a "call" each Saturday, Sunday and holiday since December 29, 1951, because an "outsider" had been engaged to tend the fire in the heater in the station on those days, on the theory that the work had been his (Claimant's) over a period of 27 years.

Claimant relies partly on the following language found in Award No. 4392: "This Division has decided many times, that station work in one-man stations belongs to the Agent, a position under the Telegraphers' Agreement. It has also been decided that station work required to be performed outside of the assigned hours of the Agent at a one-man station is work which belongs to the Agent. With these principles, we are in complete accord."

There was no problem until the adoption of the 40-hour week schedule in June, 1951. Prior to that the relief man took care of the fire on Saturday and Sunday. Later when one of the Carrier's traveling auditors discovered that Claimant was collecting pay for calls on those days, and a few of them had been paid for "taking care of furnace auth. Mr. Schling" (Chief Clerk to the Supervising Agent), Claimant was promptly advised that he was not to report on his rest days or holidays for any purpose "unless authorized to do so by proper authority." A short time thereafter (exact time not shown) the Carrier made arrangements with a taxicab driver to put a little coal on the fire on the days in question, consideration allegedly being his exclusive right to the taxi service at the station. No agency service of any kind was rendered after June 24, 1951, on Saturdays, Sundays and holidays.

The Organization also relies on paragraph (h) of Article V of the 40-hour week agreement which reads as follows: "Where work is required to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

The Organization is not claiming that the work of tending the fire belonged "exclusively" to the Agent. If it did not, the work could not have been more than "incidental" to his job because it appears that these two terms are the only ones that this Board has adopted in dealing with situations of this kind. If the work was merely incidental, we have held in numerous awards that the Carrier is free to transfer the work to others. We emphasize this because in a recent Award 6639, we did say that the word "required" indicated a mandate to the Carrier to pay the claiming employe for work performed by others, but the reason was that since the Carrier there failed to prove an "emergency" the work did belong "exclusively" to the Claimant under the rule.

The Organization in its ex parte submission says, "The call rule provisions of the 40-hour week amendments contemplates bringing the claimant out to perform less than the basic day of eight hours on his rest days and holidays to perform **special** work." The word "special" is not in the rule. The Organization's use of the word "special" we feel must be limited here to work in connection with the Carrier's services or at least for its benefit. In the instant case we think it would be unreasonable to hold that the taxi driver's putting a little coal on the fire was being done for the Carrier's benefit on the days

when the station was closed. As we said in Award 1305 "the Board must find that Mr. Alden in the acts complained of was acting in his personal capacity and not as an employe of the Carrier."

As to the taxi driver having a key to the boiler room, see Award 6525. In that award we stated too, that the arrangement as to the bread "was for protection against the weather." Here the taxi driver was likewise interested in protecting his customers against the weather.

In conclusion, we simply add that the Claimant's tending the fire during the years of his service (which Carrier categorically denies) was as much for his personal comfort as it was for the Carrier's business, and it did not interfere with his regular duties. Now that it does interfere with his regular duties, we think that under Rule H of Article VIII of the Agreement the Carrier was within its contractual rights in relieving him of this chore. (For discussion see Award 4886)

We conclude the Carrier has not violated its Agreement and the claim must be denied.

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 Employe involved in this dispute are respectively Carrier and Employe 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 did not violate its Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Timmon
Secretary

Dated at Chicago, Illinois, this 25th day of May, 1954.