Award No. 6691
Docket No. TE-6404

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Leiserson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the provisions of the Telegraphers' Agreement when and because (1) on December 4, 1951, it blanked the second trick wire-chief position in "GM" office, Washington, D. C., from 4:00 P. M. to 7:00 P. M. and (2) on December 12, 19 and 26, 1951, and January 2, 9, 16, 23 and 30, 1952, and other dates, it blanked telegrapher F. E. Devers' position, 8:00 A. M. to 4:00 P. M., in "GM" office, Washington, D. C., and

(b) in consequence thereof the Carrier shall pay C. C. Arnall, a regular relief employe in the same office who was ready and willing to protect these vacancies, eight (8) hours at time and one-half rate for each of the above-mentioned specific dates.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of September 1, 1949, 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.

"GM" telegraph office is located in Washington, D. C. and on the dates involved in this proceeding the following persons were there employed in the manner indicated below:

A. L. Collins	Manager	Outside of Telegraphers' Agreement	
F. R. McAllister	Asst. W.C.	8 A — 4 P	Rest days Mon & Tues.
R. G. Kornegay	2 Trick W.C.	4 P — 12 M	Rest days Sat. & Sun.
J. A. Kieper	3 Trick W.C.	12 M — 8 A	Rest days Thurs. & Fri.
C. C. Arnall	Relief W. C.	*	Rest days Tues. & Wed.
F. E. Devers	Telegrapher	8 A — 4 P	Rest days Sat. & Sun.
W. Logan	Printer-Opr.	10 A — 6 P	Rest days Sat. & Sun.
Hilda Chambers	Printer-Opr.	4 P — 12 M	Rest days Sat. & Sun.
A. S. Morris	Telgr. Printer-Opr.	11 A — 7 P	Rest days Sat. & Sun.
McNeeley	Printer-Opr.	830 A — 430 P	Rest days Sun. & Mon.

* relieves wire-chief positions

working his regular relief assignment, should have been used on the position each Wednesday instead of blanking the position on that day.

In handling this case with the Carrier, the General Chairman contended that it had often been held that a "position necessary to the continuous operation of the Carrier" cannot be blanked. Mr. Devers was not assigned to such a position. His position is assigned five days a week, and it is not worked on Saturday-Sunday. The Board has held that, in the absence of a specific provision to the contrary, the blanking of positions not necessary to the continuous operation of the Carrier due to the absence of the regular assigned employe is not a violation of the agreement. In Award 5528, the Third Division held:

> "It is admitted that there is no rule in the agreement specifically prohibiting the blanking of a position and it is clear from our awards that the blanking of six-day positions, because of the absence of the regularly assigned employe, is not in itself a violation of the agreement in the absence of a specific prohibition therein. Hence there is no merit in this claim."

There is no rule in the applicable Telegraphers' Agreement prohibiting the blanking of positions during the absence of the regular occupant. Also, there is no rule in the agreement requiring the Carrier to use claimant on his rest days on another assignment in addition to working five days a week on his regular assignment.

Rule 6 of the agreement specifies that regular assigned employes will receive eight hours' pay each twenty-four hour period, according to location occupied or position assigned, if ready for service and not used, **except on assigned rest days** and specified holidays.

The last paragraph of Rule 17—Section 2 provides that while it is the intent of this rule that, where practicable, employes will be relieved on their rest days, it is understood that an employe may be required to work on his rest days subject to the provisions set forth with respect to pay for work performed on such rest days.

Claimant Arnall says that he was ready and available for service on his assigned rest days, but it is clear from the above mentioned provisions of Rules 6 and 17 of the agreement that the Carrier was under no obligation to work Mr. Arnall on his rest days.

The claim that Mr. Arnall should be paid account not worked on his rest days specified in the statement of claim is without merit and is not supported by any rule or provision of the applicable agreement. There was no violation of the agreement as alleged by the employes. Carrier respectfully requests that the Board so hold and that the claim be denied.

All relevant facts and pertinent data used by the Carrier in this case have heretofore been made known to the employes' representative.

OPINION OF BOARD: This claim is in two parts, in both of which it is alleged that the Carrier violated the Telegraphers' Agreement because—"It is not consistent with the Agreement . . . to blank permanently established assignments." Although this was the original basis of both parts of the claim, the Employes' submission here contends that what actually took place in part (2) was that the Manager, who is not covered by the Agreement, took over the duties of an Assistant Wire Chief who was used to relieve an absent employe, and that the rules do not permit the Carrier "to transfer work to an outsider and label it a blanking operation."

The Carrier denies that it transferred work to the Manager, and it also states that no such contention was made while the claim was being handled on the property. Nowhere in the record do the Employes say that they did

so contend while the dispute was being handled with the Carrier; nor do they offer proof that work was actually transferred. They merely argue by inference from the scheduled assignments that it must have been transferred to the Manager. Accordingly, we cannot consider here the allegation that the Carrier transferred work to the Manager.

Although the claim does not charge that the Carrier also violated the Agreement by improperly establishing a Telegrapher assignment in the office here involved, there is considerable argument in the record about such a charge. We were also informed that this matter is the subject of another proceeding before this Division, Docket TE-6743. We think it cannot be considered in the present case.

The Claimant is the same in both part (1) and part (2) of the claim. He holds a regular relief assignment which works Thursday through Monday, relieving on the rest days of the other Wire Chiefs, and has Tuesday and Wednesday as rest days. In (1) he claims a day at the overtime rate for December 4, 1951 (Tuesday) because the Carrier blanked the Second Trick Wire Chief's position during the hours from 4:00 to 7:00 P.M., when it was vacant due to illness of its occupant. The Carrier denies that it blanked these three hours, but contends in any event that the Agreement does not prohibit blanking of an assignment when occupant is not available to fill it.

The absent Wire Chief's assigned working hours on the Second Trick were from 4:00 P. M. to 12 Midnight. The Carrier called the Assistant Wire Chief who filled the First Trick, but he was on his rest day and could not reach him. It made no effort to call the Claimant Relief Wire Chief, but instead it used the Telegrapher-Printer-Operator who was on duty from 11:00 A. M. to 7:00 P. M. to fill the vacant position from 4:00 P. M. to Midnight. It paid him straight time for the hours from 4:00 to 7:00 P. M., and the overtime rate from 7:00 P. M. to Midnight. The claim is that the absent Wire Chief's assignment was blanked from 4:00 to 7:00 P. M. because the Printer-Operator's assigned work hours on the day in question did not end until 7:00 P. M.

The Carrier states that it did not blank the assignment, but that it transferred the Printer-Operator temporarily at 4:00 P. M. from his position (under Rule 14(b) and (c)) and he filled the full eight hours of the vacant assignment until Midnight. To this the Employes reply with the question—"Who filled Morris' (the Printer-Operator's) position?" They thus imply that if the transfer was made at 4:00 P. M., as stated by the Carrier, then the latter position was blanked from 4:00 to 7:00 P. M.

Since the Printer-Operator was paid the higher rate of the vacant Wire Chief position beginning at 4:00 P. M., it is plain that no part of this position was blanked. There might be a question as to whether the Printer-Operator's regular assignment was blanked from 4:00 to 7:00 P. M., but the Employes do not base their claim on the blanking of this position. They contend that the Claimant, Relief Wire Chief, who was on his rest day on December 4, should have been called to fill the vacant Second Trick Wire Chief position from 4:00 P. M. to Midnight.

The Carrier points out that another Printer-Operator who was on duty that day from 8:30 A. M. to 4:30 P. M. was held over for an hour of overtime work. Whether Morris, the Printer-Operator who filled the vacant assignment of the Wire Chief, also did some Printer-Operator work from 4:00 to 7:00 P. M., is not shown in the record. Part (1) of the claim, therefore, seems to be based more on the arrangements the Carrier made for filling the vacant position than it is on the blanking of the vacant position for three hours.

It is argued in behalf of the Employes that by these arrangements the Carrier suspended work on the Printer-Operator's position for three hours,

when he was transferred to fill the temporary vacancy at 4:00 P.M., and that this is true even though another Printer-Operator did work an hour overtime to perform part of the three hours' work. The rule alleged to be thus violated is 9(b). This rule reads —

> "Employes will not be required to suspend work during regular hours or to absorb overtime."

There is hardly a question of absorbing overtime here, because under the arrangements made, one hour overtime was paid and the transferred employe was paid the overtime rate of the higher rate position from 7:00 P.M. to Midnight. There may be merit in the contention that the suspension for three hours was prohibited by Rule 9(b), regardless of absorption of overtime. If there was such a suspension, however, it would be Printer-Operator Morris who might be entitled to some compensation. But there is no claim that the Agreement was violated by suspending Morris from his own assignment, or that he should be compensated therefor. Instead, the claim is that the **Wire Chief's position** was blanked from 4:00 to 7:00 P.M., and the Claimant is a Relief Wire Chief whose assignment does not include relieving the Printer-Operator. (Emphasis added).

On the facts in this case we cannot hold that the vacant Wire Chief assignment was blanked, and part (1) of the claim must therefore be dismissed.

The dispute in part (2) also arose out of a vacancy, due to illness. The position involved is that of the Telegrapher referred to above, whose assignment was challenged as not in accordance with the Agreement. Devers, the holder of this assignment, was absent over a period dating from December 10, 1951 to January 30, 1952. During this period, it is claimed this assignment was blanked on many days, and that the Claimant was entitled to the work of such blanked days as fell on the rest days of his regular relief assignment, which, as stated above, were Tuesday and Wednesday.

The arrangement the Carrier made for covering this extended vacancy was to use the Assistant Wire Chief to perform the duties of Telegrapher Devers' position on Monday and Tuesday, which were the Assistant Wire Chief's rest days. But it blanked the remaining three work days of the vacant assignment (Wednesday, Thursday and Friday). The Employes contend that the Agreement requires that these three days should have been filled during each week that the vacancy lasted. And because the Claimant had Wednesday as one of his rest days, he should have been called each Wednesday, since he was ready and willing to protect the vacancy on that day of the week.

We have considered above the contention that in working the Assistant Wire Chief on Mondays and Tuesday, the Carrier transferred the latter's work to the Manager; and we found that this was not proved. Moreover, there is no claim here for these two days, and it is to be noted, also, that there is no claim for Thursdays and Fridays which were blanked as were Wednesdays. The only claim is for Wednesdays.

Despite this limited claim, we think it is enough to raise the question of whether the Carrier violated the Agreement by blanking any or all of the three days, Wednesday, Thursday and Friday during the weeks the Telegrapher's position was vacant because of his illness, and the claim was so argued. The Carrier admits the blanking of all three days, but contends that there is no provision in the 40-Hour Week Agreement which prohibits such blanking of an assignment when its holder is unable to work.

The Employes rely on a number of rules of the Agreement which they allege the Carrier violated by blanking the position on the three days in question. One of these is Rule 1, the Scope Rule, but this is not pertinent to the issue here, since all the employes involved are covered by the Agreement. Another is Rule 9 (b) which deals with suspension of work during

regular hours, or to absorb overtime. This too has no application here, since there was no suspension of work by an employe during regular hours in the part (2) of the claim. The remaining rules relied upon which need to be considered, are Rules 6, 21 (a) and (b), Rule 4, and Section 2 of Rule 17, the latter two being the main rules governing the 40-hour work week.

Rule 6 is titled "Guarantee." This provides that regular assigned employes shall receive 8 hours' pay within each 24 hour period, if ready for service and not used, except on assigned rest days and specified holidays. It is plain that this rule was not violated by the Carrier because the occupant of the vacant assignment was not ready for service during the period of his illness, and the Claimant's rest day was Wednesday, rest days being specifically excepted from the guarantee.

Rule 21 (b) states that temporary vacancies of less than 30 days "will be assigned to the senior available qualified extra employe"; and if the temporary vacancy is known to be of 30 days or more duration, 21 (c) states that "the oldest competent extra employe will be given preference." This rule too does not support the Employes' position, because the Claimant was not an available extra employe since he held a regular bulletined assignment.

The real issue in this case is, therefore, whether the 40-Hour Agreement (Rules 4 and 17) prohibits the Carrier from blanking the assignment which was vacant because of the illness of its occupant. As to this, the Employes contend, first, that under the Agreement that was in effect prior to September, 1949, the rule was that "position necessary to the continuous operation of the Carrier", (i.e., the duties of which were necessary seven days a week) could not be blanked; for to blank any part of them would mean that the position was not necessary on all seven days. They argue, secondly, that the Wire Chiefs' positions in this case being seven day positions within the meaning of the Note and paragraph (d) of Rule 4, the same rule is applicable under the 40-Hour Agreement.

We cannot agree with this contention. There is no rule in the 40-Hour provisions of the Agreement which prohibits blanking a position when the occupant is absent because of illness, or other reason of his own. Nor do we find in the Agreement which was in effect prior to September, 1949, any rule that prohibited blanking a position which was vacant for such reason. To the extent that there were Awards of this Division which ruled that positions could not be blanked because they were necessary to continuous operation, such rulings are not applicable under the 40-Hour Agreement. (Award 5589). Moreover, even under the Agreements effective prior to September, 1949, the Carrier had the right to blank positions in cases such as here, unless there was a specific rule limiting that right.

Award 5528 involved a dispute about blanking which arose in February, 1949, a few months before the 40-Hour Week became effective. A brief paragraph in this Award summed up the rulings of the Division in many previous cases, as follows:

> "It is admitted that there is no rule in the Agreement specifically prohibiting the blanking of a position and it is clear from our awards that the blanking of . . . . positions, because of the absence of the regularly assigned employe, is not in itself a violation of the Agreement in the absence of a specific prohibition therein. Hence there is no merit in this claim."

Following this Award, which was dated October 17, 1951, the Division decided a similar dispute about blanking three months later, which arose under the 40-Hour Agreement. Interpreting the provisions of this Agreement in Award 5589, (dated December 14, 1951), the Division said, among other things —

> ". . . . the fact of not filling such positions on scattered days is not an indication that they are not bona fide six or seven-day positions,

that is, where the blanking is not due to an affirmative act of the Carrier but because of the employe's failure to report for duty. . . . The foregoing indicates that it is implicit in the Forty-Hour Week Agreement that the Carrier of its own motion may not blank established six and seven-day positions of the nature here involved when the regularly assigned occupant and the relief report for duty. To go further and say that where such employes do not report for duty, Carrier must work other regularly assigned employes or relief men either on rest days or by doubling over on an overtime basis, in our opinion would be legislating for the parties. . . ."

We think this Award clearly explains the rights and obligations of the parties with respect to blanking under the 40-Hour Agreement; and when they are applied to the facts in the present case, the alleged violation of the Agreement cannot be upheld.

Accordingly, both parts of the claim are not valid.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was not violated.

AWARD

Parts (1) and (2) of claim both denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

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