

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William M. Leiserson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OF TEXAS

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad; the Missouri-Kansas-Texas Railroad of Texas that:

1. The Carrier violated and continues to violate the Agreement between the parties when, beginning with Monday, September 5, 1949 and each Monday thereafter, it combines the two positions of Telegrapher-Cashier and Agent at Frederick, Oklahoma and requires the Telegrapher-Cashier to concurrently perform the work of both positions on each such Monday designated as the rest day of the Agent's position; also when

2. Beginning with Saturday, September 3, 1949 and Sunday, September 4, 1949, and each Saturday and Sunday thereafter, it combines the two positions of Agent and Telegrapher-Cashier and requires the Agent to concurrently perform the work of both positions on Saturdays and Sundays designated as the rest days of the Telegrapher-Cashier's position; and further when

3. The Carrier requires the Agent to telegraph and handle train orders on the Saturday and Sunday rest days of the Telegrapher-Cashier and refuses to compensate the Telegrapher-Cashier as the employe properly entitled to perform such work.

4. That the Carrier shall now be required by an appropriate award and order of the Board to:

(a) Compensate the senior available extra employe the equivalent of a day's pay of eight (8) hours at straight time rate of the Agent's position (except if any such day be a holiday the rate to be time and one-half) for each Monday rest day the Carrier failed to assign a relief employe to that position;

(b) Compensate the senior available extra employe the equivalent of a day's pay of eight (8) hours at straight time

rate of the Telegrapher-Cashier's position (except if any such day be a holiday the rate to be time and one-half) for each Saturday and Sunday the Carrier failed to assign a relief employe to that position;

(c) If no extra employes available, then the Carrier shall:

1. Compensate the Agent an amount equivalent to eight (8) hours' pay at time and one-half rate for each Monday he was improperly relieved by the Telegrapher-Cashier; and
2. Compensate the Telegrapher-Cashier an amount equivalent to eight (8) hours' pay at time and one-half rate for each Saturday and Sunday he was improperly relieved by the Agent;

(d) Compensate the Telegrapher-Cashier an amount equivalent to eight (8) hours' pay at the Agent's rate for each Monday he was improperly required to perform the work of the Agent's position; and

(e) Compensate the Agent an amount equivalent to eight (8) hours' pay at the Telegrapher-Cashier's rate for each Saturday and Sunday he was improperly required to perform the work of the Telegrapher-Cashier's position.

EMPLOYEES' STATEMENT OF FACTS: There is in effect an Agreement between the parties to this dispute, dated September 1, 1949, (Rules in effect September 1, 1949); rates of pay effective February 1, 1951.

There were two (2) positions at Frederick, Oklahoma on September 1, 1949 and February 1, 1951, when the 40-Hour Week was established under Rule 26 of the Current Agreement.

The Telegrapher-Cashier's hours of assignment are 7:00 A. M., until 4:00 P. M. with one (1) hour off for lunch, except Mondays, when he absorbs the duties of the Agent in addition to his own Telegrapher-Cashier work.

The Agent's hours of assignment are 7:00 A. M., until 6:00 P. M., except Saturdays and Sundays when they are from 9:00 A. M., until 6:00 P. M., with one (1) hour off for lunch, when he absorbs the duties of the Telegrapher-Cashier, in addition to his own duties as Agent.

The Carrier failed to establish a rest-day relief position as provided by Rule 26, on which relief service was required for both the Agent and the Telegrapher-Cashier on Saturdays, Sundays and Mondays. The Agent absorbed the duties of the Telegrapher-Cashier in addition to those duties of his own assignment as Agent, on Saturday and Sunday. The Telegrapher-Cashier absorbed the duties of the Agent, in addition to his own duties as Telegrapher-Cashier on Monday.

On the rest days of the Telegrapher-Cashier there is telegraph work to be done, which the Agent was instructed to do by the Carrier and for which the Carrier also refused to pay the Telegrapher-Cashier, as per our claim No. 3. (See Employes' Exhibit No. 1)

POSITION OF EMPLOYEES: It is the position of the employes that the Carrier violated the Agreement and continues to violate the agreement between the parties by failing to comply with the provisions of the Chicago

The rule itself specifies the payment to be made under a consolidation of two positions, and such payment is limited to the rate of pay of the highest rate of pay.

The Agent is the higher rated position. On Saturdays and Sundays when such position was filled by the Agent no additional sum is due as the Agent was paid the higher rate and under any circumstances has already been fully paid under the agreement provisions.

The agreement already having provided the measure of payment when two positions are consolidated, said measure of payment being different from the items claimed under Item 4 (a), (b), (c), 1 and 2 (4) and (e), said items are not allowable as damages and should be denied.

The claims for damages in Item 4 (a), (b), (c), 1 and 2 (d) and (e) are for work not performed. The rates claimed are greater than straight time and are not to be allowed. The Board has repeatedly held not more than straight time rate is to be allowed as damages for time not worked.

In summary the Carrier has shown the Agent at Frederick, under agreement rules can perform all work at the station, including telegraphing and handling train orders; the occupant of the position can and does handle all varieties of station work on all work days of the position; the position of Telegrapher-Cashier can and does handle all types of work at the station on all work days of the position; the Carrier is not required to fill rest days of all positions in five, six, or even seven-day service; that the Carrier may have a qualified employe in the same seniority district perform all station work on his assigned work day; that the Carrier may stagger work weeks of employes to meet the Carrier's requirements; that the Carrier has not violated the agreement as alleged; that the employes have been fully paid for all services performed in accordance with the provisions of the working agreements; that under the holding in Awards 6001 and 6002 and other awards heretofore set out and relied on by the Carrier, the claim should be denied.

For each and all of the foregoing reasons, the Carrier respectfully requests the Third Division, National Railroad Adjustment Board, deny the claim.

Except as expressly admitted herein, the Missouri-Kansas-Texas Railroad Company denies each and every, all and singular the allegations of the Organization and General Committee's alleged unadjusted dispute, claim, grievance, and any and all pleading submitted by said Organization, or General Committee, or any employe.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier objects to the Division taking jurisdiction of the dispute in this case on the ground that it was not handled with the Management in the usual manner as provided by Section 3 (i) of the Railway Labor Act and by the Rules of the National Railroad Adjustment Board.

The claim as originally presented to the Carrier read: "Please allow 2 hours call account Agent doing train order work. Copied Train Order No. 83 6-2-51. Operator was available." This was dated Frederick, Oklahoma, June 2, 1951, and signed by T. E. Jones who is a Telegrapher-Cashier at that point. The same Claimant filed a similar claim for a 2 hour call on October 20, 1951, and one for 2½ hours on October 10, 1951, which read: "Order was copied for No. 84 by R. H. Birkhead Agent at 4:05 P.M. No. 84 did not arrive at this station until 6:35 P.M. Please allow 2 and one-half hours penalty time." Under date of June 29, 1951, the Carrier wrote to Claimant declining the two hour claim for June 2.

On September 5, 1951, the Telegraphers' General Chairman wrote to the Carrier, and referring to the claim for the two hour call in June, argued that the Carrier had violated Rule 26 (e) of the Telegraphers' Agreement because it did not set up a relief assignment for the Agent at Frederick; also, that this Agent "is not permitted to telegraph" because it is a "Star Agency." Thereafter there was further correspondence between the Carrier and the General Chairman until November 11, 1952. In the letters that were exchanged, the additional claims for calls on October 10 and 20, 1951, were discussed, and in each letter that the Carrier wrote it specifically referred to the claim for a call account Agent copying train order. The General Chairman in his letters did the same (including the dates of October 10 and 20), except in the last letter that he wrote, dated November 11, 1952, in which for the first time he used a different wording in referring to the claim.

Thus on August 28, 1952, the General Chairman wrote to the Carrier "in connection with the claim . . . for a call on June 2, 1951, and again on October 10th and October 20th". He noted the Carrier's position and repeated his own that Rule 26 (e) was violated, and concluded by suggesting that this be taken up at their next conference. The Carrier replied on September 4 that it was agreeable. Thereafter (November 4, 1952), the Carrier answered the General Chairman's contentions in his previous letter; on receipt of this, the General Chairman replied: "We think it unnecessary to discuss **this case** with you any further and will refer it to the National Railroad Adjustment Board." (Emphasis added.) In this final letter of November 11, however, he did not mention the claim for a call on account copying train orders, but referred to:

"Our claim at Frederick, Oklahoma, account violation of the Telegraphers' Agreement, Rule 26, Section 1, the 40-Hour Week, and Rule 9, as well as other provisions which we have set out from time to time of combining the two positions of Telegrapher-Cashier and Agent on their rest days. Also insisting that the Agent . . . can telegraph after the hours of the Telegrapher-Cashier, and on the Telegrapher-Cashier's days off."

While it is true that in the course of the correspondence about the claim for a call, the General Chairman argued about various other violations of the Telegraphers' Agreement that he alleged, this formulation of a claim much broader than the original one for a call (or the two subsequent filed) was presented to the Carrier for the first time in the letter stating that no further discussion was necessary, and the case would be referred to the Adjustment Board. Obviously, this new claim was not considered or handled in the usual manner, as required by the Railway Labor Act and the Rules of the Board.

That the dispute here is not the same as the one that was processed on the railroad property is obvious from a reading of the Statement of Claim at the head of this Award. In the first place, there is no Telegrapher-Cashier claim here at all for a call on June 2 and on October 10 and 20, 1951. Instead, there are continuing claims in behalf of both the Agent and the Telegrapher-Cashier, beginning September 3 and September 5, 1949, respectively, for other alleged violations of the Agreement. And a different claim is made with respect to the Agent copying train orders; namely, 8 hours' pay at the rate of time and one-half for each Saturday and Sunday, apparently also beginning in September 1949, though not specifically stated. Further, compensation is claimed for the "senior available extra employee" at the overtime rate on days when the Agent does the Telegrapher's work and when the Telegrapher does the Agent's work. All this is certainly not the claim for a call that was filed with the Carrier and declined by its Chief Operating Officer in charge of such matters.

The Carrier stresses that no employee filed any claim with respect to the alleged violations submitted here. It is settled by many awards of this Division that the General Committee representing the Employees has the right

to file claims involving interpretation of application of the Agreement to which it is a party. But such claims, too, must be handled in the usual manner up to the Chief Operating Officer.

The evidence shows that the claim submitted here is not the one that was handled with the Carrier; and if the General Chairman's letter of November 11, 1952, describing "our claim" (as quoted above) was intended as a notification to the Carrier of the claim to be submitted here, this claim was clearly not handled with the Carrier in the usual manner.

Accordingly, the Division lacks jurisdiction to consider the claim as submitted.

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

Dispute not handled in usual manner as required by law and rules.

AWARD

Claim dismissed for lack of jurisdiction.

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.