

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, 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:

(a) the Carrier violated and continues to violate the provisions of the Telegraphers' Agreement when and because it established, and continued, Sunday assignments with starting times not in conformity with the week-day starting times; and

(b) in consequence thereof the incumbents of the positions shown in the Organization's Statement of Facts below, shall be paid on either the "call" or "overtime" basis, dependent on whether the outside services were ahead of or behind the week-day assignment, for all Sunday services performed outside of the week-day assignment, from sixty (60) days prior to November 21, 1951 until the improper assignments were or may be corrected.

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.

The following 8-hour positions at the locations named were assigned as follows on August 1, 1950:

Location	Position	Week-day Starting Time	Sunday Starting Time
Beverly	AT	9:25 A. M.	8:30 A. M.
Beverly	ATAT	4:40 P. M.	4:30 P. M.
Beverly	ATAT	5:30 A. M.	8:30 A. M.
Gloucester	TA	7:10 A. M.	6:10 A. M.
Gloucester	ATA	2:30 P. M.	2:00 P. M.
Malden (W)	AT	6:50 A. M.	7:30 A. M.
Malden (W)	ATAT	3:15 P. M.	3:40 P. M.
Rockport	AT	5:45 A. M.	6:00 A. M.
Rockport	AAT	1:00 P. M.	2:00 P. M.
Reading	TA	5:40 A. M.	6:30 A. M.
Reading	ATA	1:20 P. M.	2:30 P. M.
Waltham	TA	6:30 A. M.	8:00 A. M.

POSITION OF CARRIER: Mr. Leighty's letter to the Secretary of the Third Division, National Railroad Adjustment Board, dated February 18, 1953 does not present to the Board any pending dispute, or disputes, on this property. There was one dispute and claim, involving an employe under the Telegraphers' Agreement at Newburyport, Mass. which had been initiated and progressed and declined by the Chief of Personnel, and which is presently before the Third Division for adjudication. No other disputes involving any other employes or stations have been initiated or progressed on this property.

The Third Division, National Railroad Adjustment Board should, therefore, decline to consider, dismiss or deny, any and all claims which have not been handled on the property, in accordance with established grievance procedure.

All factual data contained herein has been brought to the attention of Petitioner.

(Exhibits not reproduced).

OPINION OF BOARD: The claim arises because of an asserted violation of Article 5 (a) (Starting Time) of the current Agreement dated August 1, 1950 because Sunday assignments have starting times different from week-day assignments.

It appears that on July 21, 1950, concurrent with the execution of the applicable Agreement the Carrier's Chief of Personnel and the then General Chairman entered into a letter understanding 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 list referred to in that letter was furnished the then General Chairman on or about August 2, 1950. The then General Chairman died early in October of 1950. On November 20, 1951, the present General Chairman advised the Carrier as follows:

"In a check of the telegrapher positions on the system, I find that many positions have a starting time on Sunday that is different from the weekday starting time.

"This is a violation of Article 5 of our Agreement of August first, 1950 and I do not agree to a change of starting times on Sundays from the weekday starting times."

The record does not reveal affirmatively whether any conference was ever held in the interim between July 21, 1950 and November 20, 1951. It is obvious from the July 21 letter that a conference was contemplated and that existing starting times were not to be disturbed until there had been a chance to confer on the matter. The letter understanding of July 21, 1950 was a mutual subsisting agreement. It could not be abrogated by the unilateral action of the General Chairman evidenced by the letter of November 20, 1951.

Certainly, in the absence of a prior conference, the General Chairman's letter could not lay a foundation for money claims antedating November 20, 1951, for the reason that although the employes may have had a right to insist upon conformity with the Starting Time Rule in the Agreement, it is apparent that they had agreed to a suspension thereof on the Sunday assignments of the positions here involved until a conference was held or at least until the employes or carrier took some further action with respect thereto. Of course, the Carrier could not by the simple device of refusing or unreasonably delaying a conference continue those Sunday assignments at different starting times than the week-day assignments. Inasmuch as we are not here advised as to whether or not any conference was held between August 2, 1950 and November 20, 1951, nor whether any conference was held following the letter of November 20, 1951, it is obvious that we cannot decide this case on the present state of the record. A somewhat similar problem confronted this Board in connection with the Agent Telegrapher position at Newburyport. The Board by its Award 6618 remanded the case for further consideration on the property. In view of that disposition of the earlier case, the same disposition will be made of this case.

We find, therefore, that this case should be here remanded for further negotiation and consideration on the property.

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 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 claim should be remanded for further negotiation and consideration on the property.

AWARD

Claim remanded as indicated in 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 November, 1954.