

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad Company that—

(1) The Carrier violated the terms of the prevailing agreement between the parties hereto when, at its one-man station at Earlham, Iowa, it deprived the incumbent Claimant, Agent-Telegrapher H. V. Shetterly, of the work of waybilling carload shipments and other work incidental thereto, by assigning it to employees at other stations on the following dates:

Year 1952—Jan. 19, Feb. 9, 22, 23, March 1, 15,
April 5, 12, 25, 26, May 3, 10, 29, 31, June 14, 18, 25,
28, July 3, 12, 26, Aug. 9, 16, 23, Sept. 6, Oct. 4, 11,
Nov. 1, 8, 29, Dec. 6 and 13.

Year 1953—Jan. 10, 31, Feb. 14, 21, 28, March 7,
14, 28, April 11, 25, May 2.

(2) The Carrier shall be required to compensate Claimant Shetterly on the appropriate "call" basis for each violation on each date set forth above.

EMPLOYEES' STATEMENT OF FACTS: There exists an agreement between the parties hereto bearing an effective date of August 1, 1947, as to rules governing working conditions, and of September 1, 1947, as to rates of pay, both here invoked as amended since the effective dates.

Earlham, Iowa, is a one-man Agent-Telegrapher station on Carrier's main line between Des Moines and Council Bluffs, Iowa, located approximately 29.6 rail miles west of Des Moines. Claimant's assigned hours were 8:00 A. M. to 5:00 P. M. with one hour off for lunch, Mondays thru Fridays, assigned rest days Saturday and Sunday. There were no regularly assigned hours on Saturdays, Sundays or Holidays.

At Earlham, Iowa, there are two rock quarries, The Marquette quarry, and the Concrete Materials & Construction Company quarry. These quarries are served by Carrier's local freight train or switch service from Des Moines,

part of January, 1952 when the Concrete Material Company called Des Moines, West Des Moines and Stuart, Iowa giving the Agent at these points the car numbers they desired to be moved on Saturday and the destination. The agents at these points would prepare a memo bill and the regular bill was made by the Agent at Earlham on Monday and forwarded to destination. This crushed stone is used primarily for paving work in progress during the season and very little is moved out of season.

POSITION OF CARRIER: An Agreement between the Carrier and the employes of the Carrier, represented by petitioner, bearing an effective date of August 1, 1947, as amended, is on file with your Board and is hereby made a part of this record.

In the Employes' Statement of Claim, they say in part:

" . . . it deprived the incumbent Claimant, Agent-Telegrapher H. V. Shetterly of the work of waybilling carload shipments and other work incidental thereto . . ."

The only work involved is the preparing of memo bills as shown in our Statement of Facts, and there was no other work incidental or otherwise performed by employes at Des Moines, West Des Moines, and Stuart, Iowa. Mr. Shetterly, the Agent, performed all of the work in connection with making a completed way bill on Mondays. The employes involved in this dispute are all in the same seniority district. The employes apparently are relying on Rule 16, Paragraph N of the July 7, 1949 Supplemental Agreement which integrated the March 19, 1949 Agreement into the Master Agreement, reading:

"WORK ON UNASSIGNED DAYS. Where work is required by the Carrier to be performed on a day which is not 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."

We do not believe that this rule supports the employes' position in this dispute. Obviously, an extra employe would not be sent to a point to perform only two hours work and be required to pay a minimum day. As we understand this rule, it means a full 8 hour assignment that could not be included in a regular relief position because of not having sufficient positions to make a full time five day per week assignment. Thus, this one day becomes work that is not part of any assignment and belongs first to an extra or unassigned employe who has not worked 40 hours. This interpretation of the rule is substantiated by your Board in Awards 6023 and 6409.

Actually in handling of this claim on the property, the employes have not specifically set forth any rule in their Agreement with this Carrier to support this claim, and we respectfully petition that it be denied by your honorable Board.

(Exhibits not reproduced)

OPINION OF BOARD: Carrier maintains a one-man station at Earlham, Iowa, some thirty miles west of Des Moines, twenty-five miles west of West Des Moines, and eleven miles east of Stuart, Iowa. This is on the main line between Des Moines and Council Bluffs, Iowa. Prior to September 1, 1949, an Agent-Telegrapher was assigned to the Earlham station to work 8:00 A. M. to 12:00 noon and 1:00 P. M. to 5:00 P. M. daily except Sunday. Since September 1, 1949, the Agent-Telegrapher's hours have remained the same except that his assigned rest days have been Saturday and Sunday.

One of the Carrier's patrons at the Earlham station is the Concrete Materials & Construction Company, located some two miles east of town. From its quarry crushed stone is shipped in car load lots. Most of this is handled during Claimant's regular hours; however, some of the cars are moved on the Agent-Telegrapher's rest days and holidays or after his assigned hours. For

two years or more the Agent-Telegrapher was notified by the shipper and he remained over-time or reported in to perform the necessary billing work and the preparation of switch lists for the guidance of the train crews who picked up the cars outside of the Claimant's regularly assigned hours. For this he was paid under the agreement rules pertaining to overtime or calls.

Shortly before January 19, 1952, the Carrier notified Claimant Shetterly that after that date he would no longer be permitted to work overtime or on rest days or holidays to perform the customary duties incidental to the shipment of rock. From that date forward the Carrier made arrangements to handle the business through one of the three other stations, Des Moines, West Des Moines or Stuart, by "memo" or "slip" bills to cover the movement of the cars, and Claimant Shetterly prepared the revenue waybills during his regularly assigned hours. None of the employees who prepared the memoranda in the Des Moines office were covered by the Telegraphers' Agreement.

Following this change in operations, Agent-Telegrapher Shetterly filed time slips claiming payment under the appropriate overtime or call rules for each instance when the business was so handled. These claims were denied. But on March 15, 1952, the Carrier discontinued the use of employees of other organizations at Des Moines and required employees on duty at West Des Moines and Stuart to prepare the "memo" bills and switch lists. The employees involved at the latter two stations are covered by the Telegrapher's Agreement.

This practice of having the work handled through West Des Moines and Stuart continued from March 15, 1952 until May 2, 1953, the final claim date. Following the latter date, changes were made in the operation of the Division. The method of handling the crushed stone shipments at Earlham was restored to that which had been used prior to January 19, 1952, with Claimant again being called upon to handle the rest day, holiday and over-time work as required.

Since January 17, 1954, the force at Earlham has been increased so that there are now two seven day positions covered by the Telegrapher's Agreement. This makes possible the handling of all necessary work on a straight-time payment basis.

Since, during the period in question, Earlham was a one-man station, the question before us is whether Claimant had a right to perform work outside his assigned hours. Such had been the practice before the claims arose. And this practice was restored on May 2, 1953.

The movement of cars by "memo" or "slip" bills is not work reserved to any particular craft or class of employees. However, we have held many times that station work in one-man stations belongs to the Agent, a position within the scope of the Telegraphers' Agreement. Station work which occurs outside the hours assigned to the Agent of the one-man station is also work that belongs to the Agent. Awards 4392, 5993, 6975. As we noted in Award 6975,

"The decision in the present case is based on the fact that the Agent-Telegrapher at a one-man station owns all the station work at that point and not on the ground that the signing of bills of lading and billing cars is the exclusive work of a Telegrapher. See also Award 54, Special Board of Adjustment No. 41."

Under the circumstances, we must conclude that the unilateral action of the Carrier in the instant case was contrary to what was intended by the parties in the making of their Agreement.

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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 10th day of January, 1957.

DISSENT TO AWARD NO. 7590, DOCKET NO. TE-7132

The majority find that it had been the practice for claimant, "* * * to perform work outside his assigned hours", before the claim arose and "* * * this practice was restored on May 2, 1953." Then the majority state in part,

"However, we have held many times that station work in one-man stations belongs to the Agent, a position within the scope of the Telegraphers' Agreement. Station work which occurs outside the hours assigned to the Agent of the one-man station is also work that belongs to the Agent. Awards 4392, 5993, 6975. As we noted in Award 6975,

"The decision in the present case is based on the fact that the Agent-Telegrapher at a one-man station owns all the station work at that point and not on the ground that the signing of bills of lading and billing cars is the exclusive work of a Telegrapher. See also Award 54, Special Board of Adjustment No. 41.'"

Such statement is superfluous in view of previous Awards in which we denied claims on the premise of practices in evidence, notwithstanding one-man stations being involved.

For the above reason, we dissent.

/s/ J. F. Mullen
/s/ R. M. Butler
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ J. E. Kern