

Award No. 7591
Docket No. TE-7147

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD, BUFFALO AND EAST

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Buffalo and East) that the Carrier violated the Agreement, when

1. On September 13, 1952, it blanked Job No. 59 in "BO" Buffalo office, and on September 15, 1952, it blanked Job No. 12 in "BO" Buffalo office, both for the entire eight hour assignment, and

2. As a result of these violations the Carrier shall now compensate the senior idle telegrapher on the seniority district, extra in preference, for eight hours at pro rata for each of the eight hour assignments.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement in effect between the parties bearing a date of July 1, 1948, with Amendments to January 1, 1953, copy of which is presumed to be on file with your Board.

At page 47 of the Agreement Schedule of Wage Rates is found the Buffalo Office, "BO", with the personnel and wage rates in effect at the time of the signing of the Agreement. At the time the instant claims arose, the following assignment of regular positions was in effect in this office:

POSITION	CLASSIFI- CATION	DAYS PER WEEK	HOURS	REST DAYS
Job 1	Manager	Monthly rated position	None	Sat. & Sun.
Job 3	Wire Chief	7 day assignment	8:00 am to 4:00 pm	Sat. & Sun.
Job 4	Wire Chief	7 day assignment	4:00 pm to 12:00 pm	Mon. & Tues.
Job 5	Wire Chief	7 day assignment	12:00 pm to 8:00 am	Fri. & Sat.
Job 9	Printer Opr.	5 day assignment	8:00 am to 4:00 pm	Sat. & Sun.
Job 10	Printer Opr.	6 day assignment	9:30 am to 5:30 pm	Sun. & Mon.
Job 11	Printer Opr.	7 day assignment	8:00 am to 4:00 pm	Sat. & Sun.
Job 12	Printer Opr.	7 day assignment	4:00 pm to 12:00 pm	Tues. & Wed.
Job 14	Printer Opr.	7 day assignment	12:00 pm to 8:00 am	Tues. & Wed.
Job 23	Tel. Ptr. Opr.	7 day assignment	12:00 pm to 8:00 am	Sun. & Mon.
Job 57	Tel. Ptr. Opr.	7 day assignment	8:00 am to 4:00 pm	Sat. & Sun.
Job 58	Tel. Ptr. Opr.	7 day assignment	4:00 pm to 12:00 pm	Tues. & Wed.
Job 59	Printer Opr.	6 day assignment	4:00 pm to 12:00 pm	Sun. & Mon.
Job 61	Printer Opr.	5 day assignment	9:00 am to 5:00 pm	Sat. & Sun.

REGULAR RELIEF POSITIONS

Relief wire Chief (A. A. Tuscher) relieves Job 3, 4 and 5.

Relief Wire Chief and Tel'gr Printer Operator (F. S. Marshall) relieves Jobs 5, 14 and 28.

do not report for duty, Carrier must work other regularly assigned employees or relief men either on rest days or by doubling over on an overtime basis, in our opinion would be legislating for the parties. The tenor of the Agreement, particularly in the emphasis placed upon the distinction between positions and work as opposed to the work-week of the individual employe, is inconsistent with such a concept."

In Award 5590, Referee Robertson reiterated that the blanking of positions is not violative of the 40-Hour Week Agreement. We quote below the penultimate paragraph of the opinion:

"The fact that in some instances checker's positions were blanked when the checker was used as a foreman or for some other reason is not violative of the agreement. There is no requirement under the 40-hour week agreement that positions as such, that is an individual job assignments, have to be filled every day. Guarantees run to the employe rather than the position under the 40-hour week agreement."

CONCLUSION

The Carrier must retain the basic managerial prerogative of freedom of operation of the railroad without restriction, except to the extent the organization can show that the language of some agreed-to rule or understanding or government regulation definitely restricts or prohibits the procedure which the organization protests. The Carrier did not blank these jobs by laying the men off or instructing them not to report for work, but in both instances the employes were absent of their own volition.

The evidence herein presented conclusively shows there is no provision in the 40-Hour Week Agreement that imposes an obligation upon the Carrier to fill positions when the assigned occupants of the positions or their relief fail to report for work for causes beyond the Carrier's control. The claim of the Employes should, therefore, be denied.

No facts or arguments have been herein presented that have not been made known to the Employes.

(Exhibits not reproduced).

OPINION OF BOARD: There is no dispute as to the basic facts of this case. The following positions at the "BO" Buffalo office are involved:

Job No.	No. Day Position	Title	Assigned Hrs.	Rest Days
12	7-day	Printer Opr.	4:00 P. M.—12 Mid.	Tue.—Wed.
59	6-day	Printer Opr.	4:00 P. M.—12 Mid.	Sun.—Mon.

Prior to July 15, 1952, on certain occasions when an operator reported off duty because of illness or for personal reasons, an extra employe was used to cover the vacancy and when a qualified extra employe was not available, regular employes were worked overtime to cover the vacancy. On July 15, 1952, Carrier's Superintendent of Communications issued instructions to the heads of all relay telegraph offices which were frankly intended to reduce operating expenses, and particularly to cut down the amount of overtime being worked. The following excerpt is from these instructions:

"For the purpose of clarifying this situation, I wish to advise that the 40-hour week agreement and decisions with respect thereto give the carriers the absolute right to blank jobs on any occasion where the regularly assigned employe fails to report for work. This

is applicable whether an extra man is available or not. We cannot, however, blank jobs by laying men off and instructing them not to report for work where they had been scheduled to work."

On September 13, 1952, John Clark, the incumbent of Job No. 59, a six-day position, with assigned hours 4 P.M. to midnight, rest days Sunday and Monday, requested permission to be off for personal reasons. And on September 15, 1952, K. F. Guarigula, incumbent of Job No. 12, with rest days Tuesday and Wednesday, requested permission to be off on Monday before his rest days so that he could make a trip out of town. In both instances permission was granted and the positions were blanked for the days in question. In consequence, the instant claim was filed.

The Employees contend that there is nothing in the 40 hour week rules which specifically provides that the Carrier may blank a position on an assigned work day. Neither do we find that the language cited in this case requires the Carrier to cover all positions for a full forty hours each week. It has been pointed out before that the guarantee rule applies to the individual and not to the position. As we said in Award 5590, "Guarantees run to the employee rather than the position under the 40-hour week agreement."

In Award 5528, involving this Organization and another Eastern railroad, we had the following to say:

"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 employee, is not in itself a violation of the Agreement in the absence of a specific prohibition therein. . . ."

As this Board stated in Award 5589,

"... 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 employee'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 employees do not report for duty, Carrier must work other regularly assigned employees or relief men either on rest days or by doubling over on an overtime basis, in our opinion would be legislating for the parties. The tenor of the Agreement, particularly in the emphasis placed upon the distinction between positions and work as opposed to the work-week of the individual employee, is inconsistent with such a concept." (Emphasis added).

The determination of the number of employees needed to perform the work at a given situation is the function of Management, except as it may have limited itself by specific agreement. Award 6184. Under the rules here cited we see no requirement that the Carrier continue to use the same number of employees on all shifts for the full forty hours of each position. Only regularly assigned employees are guaranteed the forty hours per week. If one elects to absent himself for personal reasons, it is for Management to determine whether a full complement of employees is required at the time of the absence of the excused employee. It is not a matter subject to the decision of this Board.

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

That the Agreement was not violated.

AWARD

Claim denied.

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.