

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Western Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe System, that:

1. The Carrier violated the agreement between the parties hereto when it failed and refused to allow R. M. Clarkson payment for holiday September 6, 1954; and
2. The Carrier shall now be required to compensate R. M. Clarkson for 8 hours at the pro rata hourly rate of pay applicable to the position of agent-telegrapher at Shallow Water, Kansas on said date.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the parties hereto bearing effective date of June 1, 1951, and has been amended. The agreement and all amendments thereto are included, by reference, in this submission.

The dispute herein set forth has been handled on the property in the usual manner to the highest officer designated by the Carrier to handle such disputes, in accordance with the Railway Labor Act, as amended and the current agreement. The Carrier has refused to adjust the dispute on the property. This Division of the National Railroad Adjustment Board has jurisdiction of the parties and the subject matter, as provided in the Railway Labor Act, as amended.

The regular incumbent of the agent-telegrapher position at Shallow Water, Kans. bid in a temporary vacancy at Englewood, Kansas beginning July 6, 1954. Extra Telegrapher R. M. Clarkson was assigned to the temporary vacancy and continued to fill the position until the regular incumbent returned September 21, 1954.

The position of agent-telegrapher at Shallow Water, Kansas, is assigned to a work week Monday through Friday with Saturday and Sunday as rest days. Claimant, Extra Telegrapher Clarkson, worked exactly the same number of hours, had the same work days, and observed the same rest days as the regular incumbent would have had he not been on leave of absence.

the parties enter into them, and it has no authority to change them to avoid inequitable results. Awards 1248, 2612, 2765, 4259."

Third Division Award No. 1248:

"This 'Board must construe and apply agreements as the parties made them, and it has no authority to change them even to avoid inequitable results from their application.' Award No. 794."

Fourth Division Award No. 759:

"We have no authority to impose our judgment of the wisdom of this rule, nor does the Board have authority to impose its ideas of justice and fairness when the Agreement is set forth in clear language as it is in this case. The claim here made is, therefore, not valid under the rules."

See also Third Division Awards 4250, 5517, 5703, 5977.

In his letter of November 22, 1954 (Carrier's Exhibit "A") the Organization's General Chairman further directed attention to Article X, Section 2-b of the Telegraphers' Agreement, reading:

"Section 2-b. Extra employees when used to relieve other employees shall be paid the rates applicable to the positions on which relief service is performed, except that when used on printer clerks' positions the rate paid the extra employee will be governed by the provisions of Section 89, Article II of this Agreement."

It is not apparent to the Carrier what possible application the above quoted rule can have in the circumstances presented in the instant dispute, and the General Chairman has not explained why he cited it. That rule, it will be seen, merely prescribes the rates of pay that are to be allowed extra employees when used to relieve other employees. Certainly there is nothing contained therein which serves to change the status of an extra employee to that of a regularly assigned employee for the purpose of applying the holiday provisions of Article II, Sections 1 and 3, of the National Agreement.

The claimant Mr. Clarkson was either a "regularly assigned" employee or he was an extra employee under the rules of the Agreements. He could not be both. In other words, he obtained the temporary vacancy in position of agent-telegrapher at Shallow Water and continued thereon throughout its duration as an extra employee under the terms of the Telegraphers' Agreement and obviously could not simultaneously be a "regularly assigned" employee for the purpose of obtaining holiday pay under the terms of the National Agreement.

In conclusion, the Carrier reiterates that the Employees' claim in the instant dispute is not only wholly without schedule support or merit, but it is furthermore a clear attempt to obtain by an award of the National Railroad Adjustment Board a payment which the Emergency Board rejected. The claim should be denied in its entirety.

All that is contained herein is either known or available to the Employees or their representatives.

(Exhibits not Reproduced.)

OPINION OF BOARD: This case involves the claim of an extra employee to holiday pay allegedly due him under Section 1, Article II of the August 21, 1954, National Agreement. In numerous Awards the Second and Third Divisions of this Board have held that "regularly assigned" employees, as that term has been traditionally understood in the railroad industry, are

the only employees covered by said provision. See Third Division Awards 7430, 7431, 7432 and 7721; Second Division Awards 2052, 2169 and 2297. Claimant was not a regularly assigned employee. Nor does Claimant receive support from Section 2-b, Article X, of the Parties' Collective 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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 2nd day of July, 1957.