

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Coast Lines)**

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

1. The Carrier violated the Agreement between the parties when, March 10, 11 and 12, 1953, it required or permitted the regularly assigned manager-wire chief in its relay telegraph office at San Bernardino, California, to perform the work comprising the position of J. S. Hunter who was temporarily absent because of illness, and;
2. The Carrier shall now be required to pay the senior idle extra employe on the seniority district, a day's pay at the rate of Hunter's position for each date specified in (1) above, and;
3. In the absence of any idle extra employe on the seniority district, the Carrier shall be required to pay the following regularly assigned employes in the San Bernardino relay telegraph office who were idle on their rest days a day's pay at time and one-half of the rate applicable to their positions on the dates specified:

H. L. Darrah	March 10, 1953
J. W. Baxter	March 11, 1953
P. P. Dietz	March 12, 1953

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties bearing effective date of June 1, 1951 is in evidence.

At San Bernardino, California, the Carrier maintains a relay telegraph office where it employs an approximate average of twelve employes covered by the Telegraphers' Agreement filling the following regularly assigned positions:

CLASS I

- 1 Manager-Wire Chief
- 1 Day Wire Chief
- 1 Night Wire Chief

and is without authority in law to take from or otherwise amend and revise agreement rules by interpretation. See Third Division Awards 1230, 2612, 3407, 4763, 5079, 6197 and many others.

The Carrier repeats that the claim of the Employees in this dispute is clearly without schedule support or merit, and a denying award is accordingly respectfully requested.

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

(Exhibits not reproduced)

OPINION OF BOARD: Carrier maintains a telegraph relay office at San Bernardino, California, in which it employs an average of twelve employees covered by the Telegraphers' Agreement,—one manager-wire chief, three wire chiefs, two telegrapher-printer clerks, four printer-clerks and three relief employees. The manager-wire chief and wire chiefs are Class I employees and the telegraphers-printer clerks and printer-clerks are Class II employees under the Agreement. On March 10, 11, and 12, 1953, J. S. Hunter, one of the printer-clerks, assigned 9 A. M.-5 P. M. on those days, reported sick and did not work. The work which would normally have been performed by Hunter on those days was done during their regularly assigned hours by the remainder of the force, except for a total of nine hours of overtime on the three days, performed by the regular printer-clerks.

The assigned hours of the manager-wire chief are 8 A. M.-4 P. M. It is agreed that he performed some of the work of the absent printer-clerk during these hours on the three days involved, but the amount is in dispute. Petitioner states that since only nine hours of overtime were performed and Hunter missed three eight-hour days, the remaining 15 hours of his work were done by the manager-wire chief. Carrier asserts that only a minor portion of such work was done by the manager, that he rendered only such assistance in connection therewith as he could without interference with his duties as manager and that the balance of the work of Hunter's position was done by the other regular employees.

The claim is for a day's pay at the rate of Hunter's position for each of the three days involved, to be paid the senior idle extra employee on the district, because the Carrier "required or permitted the regularly assigned manager-wire chief . . . to perform the work comprising the position of J. S. Hunter who was temporarily absent because of illness."

The claim is based primarily upon Article III, Section 4, and Article XXI, Section 10-d. Article III, Section 4 reads as follows:

"Employees will not be required to suspend work during regular hours or to absorb overtime."

Article XXI, Section 10-d reads:

"Temporary vacancies of thirty (30) days or less on positions in Class 2, if to be occupied, will be filled by the senior available qualified employee on the extra list. If none available, it may be filled by advancing the senior qualified employee occupying a position in Class 2 in that office desiring it. If no qualified applicants desire advancement, the Company may require the junior qualified employee occupying a Class 2 position in that office to protect the vacancy until a qualified employee becomes available on the extra list."

Petitioner's contention that the manager-wire chief suspended work on his position during regular hours is based upon the assumption that his regular position requires eight full hours of work each day, and that if he performed any work on Hunter's position on the days in question, he must have suspended work on his own. However, Carrier states that he performed

all the work of his position on those days, merely doing such of Hunter's work as would not interfere with his own, and there is no evidence in the record to the contrary. We cannot find, on this record, that the manager-wire chief suspended work on his position.

As to Section 10-d of Article XXI, it is contended that if the work of a position is performed, that position is occupied; that Section 10-d prescribes the only way a temporary vacancy in a Class 2 position may be filled; and that the filling of such a vacancy in any other manner is a violation. However, at another point in the record, Petitioner takes the position that if the manager-wire chief had not performed some of Hunter's work, there would have been no violation. Thus, it is not the performance of the work of Hunter's position by other regular employes during their regular hours rather than the filling of the vacancy in accordance with Section 10-d which is the alleged violation; it is the fact that some of the work was done by the manager-wire chief.

This is not a scope rule case; both the printer-clerk and manager-wire chief positions are covered by the Telegraphers' Agreement. Carrier states that it is a part of the manager-wire chief's duties to assist in the routine handling of telegraph traffic by printer, telephone or telegraph as conditions may require; and Petitioner states that to fill out his eight hour assignment, the manager-wire chief performed a small amount of telegraphing when the force of employes was at a normal level. In the absence of evidence contradicting Carrier's statement that on the days in question, the manager-wire chief performed all of the duties of his position, doing printer-clerk work only to the extent that it did not interfere therewith, and that the remainder of the absent Hunter's work was done by other regular printer-clerks, we can find no violation of the Agreement under any of the rules cited.

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 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 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 11th day of October, 1957.