

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 (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) Carrier violated the agreement between the parties when, beginning on or about September 13, 1952, it required a combination of the work of the agent-telegrapher position with the work of the telegrapher-cashier position at Claremont, California on Saturdays; and

(2) Carrier further violated the agreement between the parties when, concurrently with the violation described in Item (1) it required a combination of the work of the position of telegrapher-cashier with the position of agent-telegrapher at Claremont, California on Mondays.

(3) Carrier shall pay the senior idle extra employe on the district involved an amount equivalent to eight (8) hours at the straight time rate for each Saturday, beginning on or about September 13, 1952, when it required the telegrapher-cashier at Claremont, California to perform the work of, and act as rest day relief employe in filling the position of the agent-telegrapher at that point. If there be no such idle extra telegrapher on any of the Saturdays involved, then the Carrier shall pay the regular occupant of the agent-telegrapher position, an amount equivalent to eight (8) hours at the time and one-half rate because he was not used to perform the work and fill his position on each Saturday, his rest day, beginning as aforesaid.

(4) Carrier shall pay the senior idle extra employe on the district involved, an amount equivalent to eight (8) hours at the straight time rate for each Monday, beginning on or about September 15, 1952, when it required the agent-telegrapher at Claremont, California, to perform the work and act as rest day relief employe in filling the position of the telegrapher-cashier at that point. If there be no such idle extra telegrapher on any of the Mondays involved, then the carrier shall pay the regular occupant of the telegrapher-cashier position an amount equivalent to eight (8) hours at the time and one-half

rate because he was not used to perform the work and fill his position on each Monday, his rest day, beginning as aforesaid.

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

At Claremont, California, the Carrier maintained a station at which it employs two employes covered by the Telegraphers' Agreement, one classified as agent-telegrapher and one as telegrapher-cashier.

Prior to September 1, 1949, both positions were assigned to a work week Monday through Saturday with Sunday as the one assigned rest day. The station was closed on Sunday.

Prior to September 1, 1949, when the 40 Hour Week Agreement was placed in effect, the Local Chairman of The Order of Railroad Telegraphers on each seniority district cooperated with the Carrier's local officials in setting up rest day relief assignments to perform the rest day relief work on six and seven day positions or combinations thereof.

Under date of August 10, 1949, Local Chairman Heaney addressed the following letter to Mr. A. J. Smith, Superintendent of the Carrier's Los Angeles Division at San Bernardino, California:

"On Friday, August 5th we had prepared on short notice and delivered to your office a tentative line up of swing relief positions together with days off and closed positions based upon your original work sheet.

As you know this report was not submitted as a commitment but rather as a temporary guide for the final preparation of a schedule that could be agreed upon. You will recall that on August 5 the line up at Oro Grande station was corrected changing the Telegrapher Cashier position from a 5-day position to a 6-day position. We discussed the possibility of combining that position with two at Lenwood and two at Barstow to provide a swing.

Now since the local committee has had the opportunity to review and check the work we find it necessary to make further correction particularly at points where 5 days work per week was originally indicated.

Sections (a-2-E) (a-3-E) and (a-5-D) of Article III of the Agreement signed at Chicago, Illinois, May 9, 1949 are applicable. Section (a-2-E) provides 'on positions, the duties of which can reasonably be met in 5 days, the days off will be Saturday and Sunday' we will therefore be obliged to adhere strictly to those provisions. Section (a-3-E) is applicable where the nature of the work is such that employes will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday. Section (a-5-D) provides for the setting up of all possible regular relief assignments to do the work of positions where there is work to be performed on a rest day of that position. It is not permissible to assign the work of one position to another position other than a swing position.

We are enclosing the original copy of corrections pages one and two for the following stations:

Oro Grande	Inglewood
Claremont	Wingfoot
Pomona	Colton
Glendora	Placentia
Monrovia	Escondido
Torrance	Anaheim

ber 15, 1952, is improper for the reason that the claim was first presented to the Carrier by the Local Chairman in letter dated November 26, 1952 (Carrier's Exhibit "A-2), and the retroactive penalties are therefore necessarily limited by the provisions of the last sentence of Article V, Section 10 of the current Telegraphers' Agreement, which reads as follows:

"Grievances, other than appeals on time claims or discipline not presented within sixty (60) days from date alleged to have occurred, are barred from consideration. Time claims must be presented in writing to the Railway Company to be entitled to consideration, and any payment claimed will, if allowed, be restricted to a period commencing not earlier than thirty (30) days prior to date so presented."

As explained hereinabove, the position of telegrapher-cashier at Claremont involved in this dispute, was abolished effective July 1, 1954, due to discontinuance of Claremont station as a Western Union office. Inasmuch as the staggered work week assignments complained of were discontinued as of that date, the time element involved in this dispute is automatically restricted to the period from October 27, 1952 to June 30, 1954 inclusive.

* * * * *

In conclusion, the Carrier respectfully reasserts that the claim of the Employees in the instant dispute is entirely without merit or support under the Agreement rules and should be denied in its entirety.

The Carrier is uninformed as to the arguments the Employees will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Organization's ex parte submission or any subsequent oral arguments or briefs submitted by the Organization in this dispute.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This case is a companion case to that involved in Award 8136. The Agent-Telegrapher and the Telegrapher-Cashier involved herein are both covered by the Telegrapher Agreement and hold common seniority in the same seniority district. For the reasons stated in the aforementioned Award the Claim herein must be denied.

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 19th day of November, 1957.