

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 (Eastern 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, on Monday, April 5, 1954, it notified the incumbents of agents' positions at Vine Creek, Barnard, Ada, Minneapolis, Wells and Manchester, Kansas, that effective at once their assignments would be changed to work Mondays through Fridays with rest days of Saturday and Sunday instead of Tuesday through Saturday with rest days Sunday and Monday, thereby reducing the work week of the incumbents of said positions to four days in the work week beginning Tuesday, April 6, 1954, and thereafter refused and continued to refuse to compensate said incumbents for five days in said work week; and

2. The Carrier shall now be required to compensate the occupants of the agents' positions named in 1 above the equivalent of eight hours' pay at the rate applicable to said positions.

EMPLOYES' STATEMENT OF FACTS: Agreements between the parties bearing effective dates of September 1, 1949 and June 1, 1951 are in evidence.

The Supplemental Agreement, effective September 1, 1949, was adopted by the parties to effectuate the 40-Hour week established by the National 40-Hour Week Agreement. The rules contained therein were recodified and carried forward verbatim in the current Agreement.

Prior to September 1, 1949, the following assignments were in effect at the stations involved in this dispute:

Manchester Agent-Telegr.	7:00 A. M. to 4:00 P. M. Monday thru Sat.
Vine Creek Agent-Telegr.	7:30 A. M. to 4:30 P. M. Monday thru Sat.
Wells *SNT agent	8:00 A. M. to 5:00 P. M. Monday thru Sat.
Minneapolis Agent-Telegr.	7:30 A. M. to 4:30 P. M. Monday thru Sat.
Ada Agent-Telegr.	8:00 A. M. to 5:00 P. M. Monday thru Sat.
Barnard Agent-Telegr.	8:00 A. M. to 5:00 P. M. Monday thru Sat.

*Indicates small non-telegraph.

was no occasion to change the claimant Agent-Telegraphers' assigned rest days so as to permit them to work on Monday, April 5th, which was one of their assigned rest days, on which there was neither train service nor duties or operations necessary to be performed. The same is true with regard to Saturday, April 10th, which was a day on which the new tri-weekly train service would not operate after April 7th, when the tri-weekly train service was changed to operate on Mondays, Wednesdays and Fridays; hence it will be equally obvious that a deferment of the change in the Agents' rest days until Monday, April 12th, as suggested by the General Chairman, would have necessitated working the claimant Agents on Saturday, April 10th, on which there was no service, duties or operations necessary to be performed.

While the General Chairman stated in his letter of May 26, 1954 that "Our position in this matter has been sustained by the National Railroad Adjustment Board in several awards", he cited but one Award, i. e., No. 6519, which was apparently the sole Award he could point to which served to even lend a semblance of support to his position. It is needless for the respondent Carrier to again point out the fallacy of the majority's reasoning in Award No. 6519, since the Carrier Members' dissent thereto should be sufficient to show that the Award was rendered in complete disregard of the record and agreement rules and should not be accepted as a controlling precedent.

It is also interesting to note that the majority in Award No. 6519 did not attempt to construe the guarantee rule, and did not even make mention thereof in the Opinion of Board, but simply based their decision on (1) the Carrier's admitted failure to comply with the 72 hours' notice rule and (2) an alleged violation of the "beginning of work week" rule. Award No. 6519 also lends no support to the Employees' claim in the instant dispute for the reason that the respondent Carrier complied in all respects with the 72 hours' notice rule, i. e., Article III, Section 17 of the current Telegraphers' Agreement, by giving the claimant Agent-Telegraphers more than the required 72 hours' advance notice of the change in their assigned rest days. Insofar as concerns Article III, Section 13 of the current Telegraphers' Agreement, which is similar to the rule referred to in Award No. 6519 as the "beginning of work week" rule, a careful examination and analysis of the language of Article III, Section 13 will plainly reveal that there is nothing contained therein which could possibly lend support to the Employees' claim in the instant dispute. Article III, Section 13 simply defines the term "work week" and contains nothing whatever which could possibly be construed as requiring the Carrier to guarantee employees against loss of time or earnings in instances where the needs of the Carrier's service necessitate changing their assigned rest days.

The Carrier further asserts that Award No. 6519 was improper and should not be controlling in the instant dispute for the reason that it had the effect of amending the agreement rules then under consideration by writing language into those rules which did not appear therein, and would also do the same to the Agreement rules in effect between the parties hereto, in total disregard of the fact that (1) the authority of the Board is limited to the interpretation of agreement rules as written, and (2) the Board is without statutory authority to either add to, take from or otherwise amend existing agreement rules.

In conclusion, the Carrier respectfully asserts that the Employees' claim in the instant dispute is entirely without merit or support under the agreement rules in effect between the parties hereto and should be declined in its entirety.

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

(Exhibits not reproduced.)

OPINION OF THE BOARD: On Monday, April 5, 1954, the Carrier addressed the following telegram to Claimants (a similar message was sent to the Agent at Vine Creek):

"Effective at once agents assignments Barnard, Ada, Minneapolis, Wells, Manchester changed to work Monday through Friday off Saturday and Sunday instead of Sunday and Monday. No change in assigned hours. Acknowledge."

Since Claimants were observing their rest day on April 5, they did not receive the telegram until after they had commenced work on Tuesday, April 6, 1954. Claimants worked Tuesday, April 6, through Friday, April 9, but were not permitted to work on Saturday, April 10, and they now contend that Saturday, April 10, was a part of their old work week and that they accordingly should have been permitted to work that day.

The identical issue involved herein has been before this Division numerous times and it is impossible to harmonize the conflicting awards thereon that have been rendered by the Division with the assistance of different Referees. The present Referee agrees with the reasoning and conclusion reached in Award 7324, which involved similar facts and rules essentially identical to those involved herein. Also see Award 6519. Applying the reasoning of Award 7324 to our present case Saturday, April 10, remained a part of Claimants' old work week as an assigned work day in that work week, and it follows that the Carrier violated the Agreement in not using Claimants on that day. The Carrier must pay for the lost time at the pro rata rate.

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 violated the Agreement.

AWARD

Claim sustained.

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.

DISSENT TO AWARD 8144, DOCKET TE-7688.

The erroneous premises upon which a sustaining decision was entered in the present Award were fully developed in our **Dissent to Award 8103** which is equally applicable here. For the reasons stated therein we are compelled to dissent.

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