

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Grand Trunk Western Railroad that:

1. Carrier violated the terms of the agreement between the parties when it failed to use the regular occupant of the second shift Operator-clerk position at Milwaukee Junction, Michigan, N. J. Allison, to perform the service required on his position August 17, 1954, one of his rest days, instead of diverting the occupant of the Pontiac Swing Position to perform such service.
2. N. J. Allison shall be compensated for August 17, 1954, on the basis of eight hours at time and one-half of the rate of his position.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collectively bargained agreement entered into by Grand Trunk Western Railroad Company, hereinafter referred to as Carrier or Company and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective July 6, 1951. The agreement is, by reference, included herewith as though set herein word for word.

This dispute was handled on the property in the usual manner, to and including the highest officer designated by Carrier to handle such matters and was not adjusted in accordance with the agreement. The dispute, having failed of adjustment, because Carrier's representatives failed and refused to apply the agreement, is submitted to National Railroad Adjustment Board, Third Division, for Award. Under the provisions of Railway Labor Act, as amended, this Board has jurisdiction of the parties and subject matter.

At Milwaukee Junction (Michigan) there are three positions of Operator-Clerk, assigned 8 hours each, daily, seven days per week. Thus, round the clock service is maintained at this point. Under the provisions of the Forty Hour Week Agreement each regular assigned occupant of a position is assigned five work days and two rest days in his work week. Rest day relief is provided by regular assigned rest day relief.

N. J. Allison is the owner of the second shift position of Operator-Clerk with assigned hours of 4 p. m. to midnight. His assigned work days are Thursday through Monday and assigned rest days are Tuesday and Wednesday of each week.

Attached as Carrier's Exhibit No. 3 is a statement giving examples of actual use of extra Relief Agents during the year 1954 and portion of 1955. In all cases the employe was paid Relief Agent's rate (or rate of the position relieving on, if higher) together with expense allowance when called away from their residence, as provided in Rule 23.

The use of the Relief Agent to fill the vacancy on August 17th was in accordance with Rule 23 and settlement of July 24, 1946 as consistently applied in past practice. The claim of Operator Allison should be denied.

This case has been handled in the usual manner on the property up to the highest officer designated to handle claims and grievances, and has been declined.

All data contained herein have in substance been presented to the employes and are part of the matter in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: During the time involved herein Claimant N. J. Allison was regularly assigned to work as Operator-Clerk, Thursday through Monday, at Milwaukee Junction, Michigan; his Tuesday and Wednesday rest days were protected by a regularly assigned relief position. On Tuesday, August 17, 1954, the regular relief man was absent due to illness and there was no qualified extra employe available to work Claimant's position—the Carrier used Carl Easton, who held a regularly assigned rest day relief assignment at Pontiac, Michigan. The question herein is whether it was improper for the Carrier to thus use Employee Easton instead of using Claimant Allison.

The disposition of this case is governed by Rule 23 (d) of the Parties' Agreement. This is a special rule, which provides, in part:

"(d) At times when the number of Relief Agents, as provided for on any Division, is not sufficient to meet the requirements, **extra Relief Agents may be employed as follows: A Telegrapher holding a regular position, and who may in such circumstances be used to relieve an Agent or Operator,** will if called away from his place of residence, be paid his regular hourly rate plus two dollars and fifty cents (\$2.50) per day expenses, but in no case less than the rate of the man relieved. * * *" (Emphasis added.)

The Carrier's view regarding the application of Rule 23 (d) is supported by a mutual understanding of the Parties, reached in 1946, as to the proper construction of the Rule. In the 1946 instance an Operator, W. J. Wichman, who held a regular assignment at Royal Oak, Michigan, was temporarily used to cover an Operator-Clerk position at Milwaukee Junction. The understanding which disposed of the controversy which grew out of such use of Employee Wichman was as follows, in part:

"After a full discussion of the case it was agreed that Mr. Wichman had been properly used and paid under Rule 23(d), and further **that the rule will be so construed by all concerned in the future.** * * *"

(Emphasis added.)

The fundamental principle involved in the just-quoted understanding applies equally to our present case.

The construction which the Parties gave to Rule 23(d) in 1946 was in existence and had not been repudiated when the Parties executed the present Agreement in 1951, and said Rule was carried over into the present Agreement without change. As this Division stated in Award 4791, "the re-adoption of a rule generally has the effect of re-adopting the mutual interpretation placed upon it by the parties themselves."

In the present case the Organization has failed to give due recognition to the existence of special Rule 23(d) and to the Parties' prior interpretation thereof. The existence of this Rule and mutual interpretation distinguishes this case from the case recently decided by this Division in Award 8041. In the present case, before any possible "priority right" of the regular occupant to the work is reached, extra Relief Agents or Operators may be utilized to the extent permitted by Rule 23(d). In view of the fact that the Carrier did act within the permissive limits of Rule 23(d), it must be concluded that the Carrier did not violate the 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 19th day of November, 1957.