

Award No. 8157
Docket No. TE-7399

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware, Lackawanna and Western Railroad, that:

(1) Carrier violated the Agreement when, beginning Wednesday, November 25, 1953, and continuing on each Wednesday until and including May 5, 1954, it deprived G. N. Clark of the right to work his regular assignment at "BY" Tower, Binghamton, New York, and;

(2) As a result of this violation Carrier shall now be ordered to compensate claimant G. N. Clark in the amount of one day's pay for each Wednesday during the period specified in part 1 of the claim, at the pro rata rate of the "BY" Tower position representing work lost by him.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties bearing a date of July 1, 1953.

The Telegraphers' Bulletin of positions issued by Carrier on August 16, 1949, showed the following position open for bids:

"Cycle Position No. 2-A, Home Station, Binghamton

Trick	Day of Week	Hours	Rate
1st Operator WF Office	Sat.}	8:00 A. M.- 4:00 P. M.	\$1.684
1st " " "	Sun.}		
2nd " " "	Mon.}	4:00 P. M.-12:00 Mid.	\$1.666
2nd " " "	Tue.}		
3rd Towerman BY Tower	Wed.	12:00 Mid. - 8:00 A. M.	\$1.672
Rest Days Thursday and Friday."			

On August 30, 1953, Carrier issued its regular bulletin showing the following assignment, among the others:

serve in that capacity without violating the Telegraphers' Agreement, in which event there would have been no impediment to his working on his regular position.

There is no analogy between this case and those relating to the transfer of a telegrapher from one telegrapher's position to another. The rights of such employes so transferred are, of course, to be determined according to the terms of the effective Telegraphers' 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 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 Carrier did not violate the Agreement.

AWARD

Claim denied."

The Carrier asserts the claim is without merit. It is not supported by rule, precedent or practice and should be denied in its entirety.

All data in support of the Carrier's position have been made known to the Employes.

OPINION OF BOARD: Claimant was assigned to Cycle Position No. 2-A, which consisted of working the first trick operator's position at "WF" Office, hours 7:45 A. M. to 3:45 P. M., on Saturdays and Sundays, and the second trick, hours 3:45 P. M. to 11:45 P. M., on Mondays and Tuesdays. The assignment also included the third trick towerman position at the "BY" Tower on Wednesdays, hours 11:45 P. M. to 7:45 A. M.

Thursdays and Fridays were Claimant's rest days.

On the dates in question Claimant did not work the third trick towerman position, hours 11:45 P. M., Wednesday to 7:45 A. M. Thursday, but worked the third trick dispatcher's position, hours from 12:00 midnight Wednesday to 8:00 A. M. Thursday. The Claimant was carried on the payroll as in service on Thursday, although he started work at midnight on Wednesday.

The Employes assert that this had the effect of Claimant's being off duty on Wednesday and working Thursday as dispatcher, and contend that under Article 16 (d-4) he should be compensated for Wednesday because he lost the calendar day of Wednesday, and as a result lost time as set forth in the rule.

The Carrier contends that the Claimant lost no time as a result of starting at midnight on Wednesday rather than at 11:45 P. M. on Wednesday.

The Carrier also contends that Article 16 (d-4) was not violated because the Claimant allegedly chose to work as he did.

The Rule involved, Article 16 (d-4), reads as follows:

"Employes performing service as extra train dispatchers who necessarily lose time moving to and/or from assignments in such service will be compensated for such time at the rate of the position to which they are assigned under this agreement."

Both parties have cited awards in support of their contentions, the Employees relying heavily upon Awards 2204 and 5442, and the Carrier emphasizing Award 2729.

After careful consideration of the cited awards we must conclude that none of them can be applied to the present case because in none of them is the issue decided in any way comparable to the issue here. No rule comparable to Article 16 (d-4) was involved in any of them.

We must also reject the Carrier's contention that Claimant's voluntary performance of work on the dispatcher position renders the rule inapplicable. Obviously, Claimant performed the work with the Carrier's consent if not at its express direction.

The Rule clearly was designed to protect a telegrapher from loss of time from his telegrapher's assignment resulting from moving to and/or from assignments as extra train dispatcher. Such moving back and forth is plainly provided for in other portions of Article 16 (d).

The sole question to be decided is whether Claimant lost time when he moved from his telegrapher assignment to the train dispatcher assignment for one day each week.

It is noted that the telegrapher assignment for Wednesday originally had a starting time of 12 midnight—the same as the dispatcher assignment. The change in starting time appears to be in accordance with the Agreement, and it is also noted the Employees assert that this change in starting time has no bearing on the dispute (p. 17).

It follows that so far as resolution of the present dispute is concerned, the two assignments coincide in time. It is not necessary to decide, and we do not decide, what calendar day is involved in the dispatcher assignment. For in any event Claimant merely worked a day as extra dispatcher on the same shift or trick he would otherwise have worked a day as a telegrapher. The fifteen minutes difference in starting and quitting times makes no change in that basic fact.

Accordingly, our holding must be that Claimant lost no time within the meaning of Article 16 (d-4) and is not, therefore, entitled to the payment claimed.

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 effective Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1957.