

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY (Eastern District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (Eastern District) that:

1. Carrier violated the Agreement between the parties hereto, when on the 16th day of August, 1952, and continuing thereafter, each and every Saturday, it required and permitted train service employes on Train No. 518 to perform work of handling mail, baggage and express, at Arnold, Nebraska, when the Agent-telegrapher assigned thereto was not on duty.
2. Carrier violated the Agreement between the parties hereto, when on the 17th day of August, 1952, and continuing thereafter to and including the 7th day of December, 1952, each and every Sunday, it required and permitted train service employes on Trains No. 517 and 518, to perform work of handling mail, baggage and express, at Arnold, Nebraska, when the Agent-telegrapher assigned thereto was not on duty.
3. Carrier shall be required to compensate the Agent-telegrapher, Arnold, Nebraska, as provided in the Agreement, for call on each and every Saturday, commencing August 16, 1952 and continuing until such violative practice is discontinued.
4. Carrier shall be required to compensate the Agent-telegrapher, Arnold, Nebraska, as provided in the Agreement, for calls on each and every Sunday, commencing August 17, 1952 and continuing through December 7, 1952.

EMPLOYES' STATEMENT OF FACTS: The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers, is the duly certified representative of certain employes (hereinafter specifically set forth) of Union Pacific Railroad Company, hereinafter referred to as Carrier or Company.

Carrier is a rail carrier within the meaning of Railway Labor Act, as amended, and Employes is a representative of employes as defined in such Act.

The Carrier's agents on the Kearney Branch receive a commission for the handling of cream when they of their own volition go to the station on Saturdays, make out the waybills, and load the cream.

Head-end business on this property is handled by clerks, telegraphers or trainmen and is not the exclusive work of any one craft.

There is no basis for claims for calls on Saturday under schedule rules, interpretations or practices and the Board is requested to deny the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 1, 1949, when the Forty Hour Week agreement went into effect, the Agent-Telegrapher at Arnold, Nebraska, a one-man station, had handled the mail, baggage, and express, six days a week within his regularly scheduled hours, and on Sundays by regular standing call. Subsequent to September 1, 1949, when the Agent-Telegrapher went on a Monday through Friday week, he continued to perform that work on Saturdays and Sundays as well as during his regular hours, but did not receive call pay for Saturdays and Sundays. The Carrier states that the Agent-Telegrapher in question, a Mr. Buck, was content to receive the commissions on the cream handled on those days, and made no claim for call pay.

Mr. Buck retired on August 12, 1952 (a Tuesday), and the following day the Carrier instructed the conductor on the Saturday and Sunday trains that thereafter he would handle the shipment of cream on Saturdays and Sundays. The Carrier did not call Buck's successor, and refused to pay him call pay, but required the train crew to handle the cream. Claim was promptly made.

It should be stated that the Agent-Telegrapher's work in connection with the cream shipments consisted of receiving the cream from the shipper, preparing the way-bill, issuing the receipt, loading the cream on the platform truck, and rolling the truck to the baggage compartment of the train. The train crew's regular work consisted only of lifting the cream from the truck into the car. Following August 12, 1952, the train crew was required to do whatever was necessary in connection with the shipment on Saturdays and Sundays, and though the Carrier asserts that the shippers themselves put the cream on the platform truck and rolled it to the baggage compartment, or loaded it directly from their trucks to the baggage compartment, it is apparent that the conductor "received" the shipment for the Carrier, which the Agent-Telegrapher ordinarily did, and issued receipts.

After the claim was filed, and some correspondence had ensued, the Superintendent of the Carrier rescinded the order as to Sundays, and reinstated Sunday calls for the Agent-Telegrapher. Paragraphs 2 and 4 of the claim, relating to Sundays, therefore are limited to the period prior to that reinstatement of Sunday calls, namely, from August 17 to December 7, 1952. The Carrier now concedes the validity of these paragraphs of the claim, and they will therefore be sustained.

It is clear that the reason for the Carrier's concession of Paragraphs 2 and 4 of the claim is the realization that Award 4160 of this Board is controlling so far as the Sunday calls are concerned. Award 4160 applied only to Sundays because it was decided in 1948, before the 40 hour work week went into effect, and Saturday work was within the regular 6-day week at that time.

But every reason which led the Board to decide Award 4160 as it did, with respect to the only rest day which existed at that time, applies with equal force to the additional rest day of Saturday which exists today. The Carrier has shown no valid reason for holding that, though the work done on Sunday belongs to the Agent-Telegrapher, the same work done on Saturday does not.

Reliance is had upon the fact that the now retired Agent-Telegrapher performed this work without claiming call pay for three years. The violation of Mr. Buck's rights without protest from him could not confer on the Carrier a right to continue such violation.

For these reasons the claim must be sustained.

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 Employee involved in this dispute are respectively carrier and employe 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 violated by the Carrier.

AWARD

Paragraphs 1, 2, 3 and 4 of the claim are sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March, 1958.