

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Order of Railroad Telegraphers on the Pennsylvania Railroad Company that,

The Agreement was violated when the position of Printer Operator first trick was combined with the Wire Chief's position on Labor Day, September 6, 1954 and the Printer Operator not used to perform the regular scheduled service that accrued to the position Printer Operator. The position of Wire Chief in BAL 11 is a position covered by Regulation 3 in the Agreement and is not permitted to perform routine duties during his tour of duty. Further violation occurred in that the work of the Printer Operator was not entirely abolished on this Holiday. Regular Operator H. H. Goodman owning Printer Operator position to be paid a day's pay in addition a day's pay at the time and one-half rate for not being used to fill the regular position, which is the pay entitled to receive had the position been worked.

EMPLOYEES' STATEMENT OF FACTS: The claimant, H. H. Goodman, is a regularly assigned Printer Operator in "B" Office, Baltimore, Md., the positions of which are shown in the Rate Schedule of the current Agreement as follows:

Maryland Division

Baltimore, Md.	BAL 11	1st Trick	*Wire Chief	\$345.14 Mo.
Baltimore, Md.	BAL 11	2nd, 3rd Trick	Asst. Wire Chief	2.007 Hr.
Baltimore, Md.	BAL 11	1st, 2nd, 3rd Trick	Printer Operator	1.89 Hr.

His assigned tour of duty if 7:59 A.M. to 3:59 P.M., rest days Saturday and Sunday. This position is a five day position and bulletined to work on seven designated holidays.

On Labor Day, September 6, 1954, one of the holidays enumerated in Regulation 4-H-1(a) and (b), the claimant was scheduled to work but the Carrier blanked his position and required the Wire Chief, an asterisk position, and shown as such on the Rate Schedule to perform the work of the claimant in

Claimant is not entitled, under the Agreement, to the compensation which he claims.

It is respectfully submitted, therefore, that the claim in this case is not supported by the applicable Agreement and should be denied.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employee, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a proper record of all of the same.

Oral hearing is desired.

All data contained herein have been presented to the employee involved or to his duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The claimant is a Printer-Operator at the Carrier's Baltimore telegraph office. His position is hourly-rated and bulletined as a five-day position with Saturday and Sunday as off-duty days. On Labor Day, September 6, 1954, one of the seven paid holidays recognized by the applicable Agreement, the Carrier released claimant, giving him due prior notice that he was not to work on that day. Such work of the Printer-Operator position as was required to be performed during claimant's trick that Monday was handled, in addition to his regular duties, by the Wire Chief, the only employee on duty at the time in question. While claimant did receive a day's pay for that Holiday in accordance with the terms of the Agreement, petitioner contends that he is also entitled to holiday pay of time and one-half on the theory that the Wire Chief was called upon to perform work that really belonged to claimant. The Carrier argues to the contrary and maintains that the Agreement supports its position.

The controversy centers on the meaning of the proviso in Rule 4-H-1(a) of the Agreement which states that "If conditions of business permit, employees shall be excused on" the seven designated holidays. In our opinion, this language is sufficiently broad to authorize the Carrier to "excuse" an employee on the stipulated holidays under the circumstances of the instant case. If the contracting parties had intended to provide that a position could be blanked on a designated holiday only if there were no work of that position to be performed, it was incumbent upon them to spell out that purpose in more positive and limited language than is found in the rule now under discussion. We consider it apparent and find that the proviso in question does not convey or reflect the restricted meaning advocated by petitioner. It also appears to our satisfaction that neither Rule 4-G-1 nor any other provision of the Agreement calls for a contrary result.

Of course, the question as to whether or not "conditions of business permit" is one of degree and if it were shown that a position was being unfairly prejudiced by the unfair use of Rule 4-H-1(a) or that the Wire Chief was actually called upon to perform a substantial portion of claimant's work on the holiday, a different conclusion might well obtain. The burden of proof in that regard is on petitioner and it has failed to make a sufficient showing on the point. As a matter of fact, the sole evidence regarding the question is presented by the Carrier and is to the effect that the only Printer-Operator work handled by the Wire Chief on the day in question consisted of 17 calls as compared with 75 in any normal working day.

Under the circumstances, we are satisfied that the act complained of by petitioner was proper and compatible with the terms of the Agreement.

Petitioner also maintains that it was improper for the Carrier to assign any of claimant's work to Wire Chief, an asterisk position. We note that while Wire Chief is a Group 2 position included in the Scope of the Agreement, it is recognized by the Agreement as an "excepted" position and that a certain measure of supervisory and technical duties attach to it involving considerations beyond those of ability, qualifications and seniority. It is on quite a different level, therefore, than is the position occupied by claimant. Nevertheless, the only provision of the Agreement that concerns work which may be performed by the Wire Chief is Rule 3-C-1 which reads as follows:

"3-C-1. No position now existing or hereafter established shall be designated by an asterisk (*) in the Rate Schedules if the employee filling such position is normally required, during his entire daily tour of duty, in addition to his supervisory duties, to perform routine duties usually performed by Clerical, Station or Group 2 employees."

The language just quoted makes plain that the only prohibition regarding the assignment of Group 2 work to "asterisk" positions is that they may not "normally" perform routine duties of employees in claimant's category. The present case involves a holiday and not a normal situation and we consider it not inconsistent with the terms of the Agreement for the Carrier to have made such use of the Wire Chief, who was on duty on the Holiday, as it believed to be in its best operational interests.

For the reasons hereinabove discussed, the claim must be denied. See Award 426. Award 8563 is to be distinguished since it was based on a different record and Agreement.

In view of petitioner's contention that the Carrier has inserted new issues and data into its arguments before us that were not part of the record developed on the property, we have confined our discussion, in arriving at our findings, to the terms of the Agreement and the record as it was submitted to this Board prior to oral argument. Cf. Awards 5457, 6657 and 7601.

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 Employee 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 there has been no violation of the applicable Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of February, 1959.