

Award No. 9115
Docket No. TE-8050

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Referee Thomas C. Begley

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 agreement between the parties hereto when it failed to use W. F. Howard, regular occupant of the Night Chief Operator position at Durand, Michigan, to perform the service required on his position April 1, 2, 8, 9, 15 and 16, 1954, rest days of the position, instead of diverting the occupant of first shift assignment, Milwaukee Junction to perform such services.

2. W. F. Howard shall be compensated for April 1, 2, 8, 9, 15 and 16, 1954, on the basis of eight hours (each day) at time and one-half 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 Employes 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.

The Claimant in this dispute, W. F. Howard, is the regular incumbent of assignment on position with classification of night chief operator at Durand, Mich. The assigned hours of the position are 12:00 midnight to 8:00 a.m. Claimant's assigned work week is Saturday through Friday with rest days of Thursday and Friday. The wage rate is \$2.021 per hour.

The rest days are part of a regular swing assignment called Durand swing. The position includes relief on the following assignments:

Manager C. A. Skog's letter of July 24, 1946 addressed to Mr. J. H. Dixon, General Chairman of the Order of Railroad Telegraphers:

"Subject No. 3. Overtime claim of Operator W. J. Wichman, Royal Oak, Michigan, for time worked at Milwaukee Junction.

Decision: This employe held a regular assignment as an Operator with hours from 12:00 midnight to 8:00 A. M. During the period December 19th to 28th, 1945 he was used as an Operator-Clerk covering the hours from 4:00 P. M. to 12:00 midnight at Milwaukee Junction. For such service Mr. Wichman was allowed eight hours at the straight time Milwaukee Junction rate (\$1.01) plus \$2.50 per day expense allowance under the provisions of Rule 23(d) of the Telegraphers' Agreement. You made claim for eight hours at straight time rates account of his not being used on his regular assignment at Royal Oak plus eight hours at overtime rates each day for the service performed at Milwaukee Junction. 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; however, in view of this particular case we agreed to allow Mr. Wichman four hours additional pay at the straight time Milwaukee Junction rate for a period of nine days (one day during the period, a Sunday, has previously been allowed at overtime rates) without prejudice to such an agreement."

Copy of Mr. Skog's July 24, 1946 letter is attached as Carrier's Exhibit No. 2.

The practice of the Carrier, over a period of many years has been to use Relief Agents and extra Relief Agent, for the relief of Agents, Operators, Operator-Clerks, Operator Levermen, on any occasion which necessitates relief of the regular incumbents of a position. The use of Relief Agents to fill vacancies is more expensive to the Carrier than using an employe off the extra list; however, very often the employes on the extra list because of their lack of experience are not qualified to fill the particular vacancy and in such case a Relief Agent is used. In the instant case, the Durand relief assignment, including two days work per week on the position of Night Chief Operator, could not be handled by the available extra list employes who were not qualified to handle the work involved. For this reason the Carrier employed extra Relief Agent Nelson, as was its right under Rule 23(d).

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 employe and are part of the matter in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: The claimant, W. F. Howard, is the regularly assigned occupant of the third trick Night Chief Operator's position at Durand, Michigan. The assigned hours of his position are from midnight to 8:00 A. M., Saturday through Wednesday, with rest days of Thursday and Friday being relieved on the two rest days by a regularly assigned rest day relief employe.

On the dates of April 1, 2, 8, 9, 15, 16, 1954, the regular relief employe was not available to protect his assignment. The Carrier permitted B. R.

Nelson, the regular assigned occupant of the first trick position at Milwaukee Junction, to work the third trick Night Chief Operator's position at Durand.

The employees contend that claimant should have been used to work his rest days, since neither the regularly assigned rest day relief employee or a qualified extra employee was available to work this position.

The Carrier states that it was permitted to use employee B. R. Nelson under Section 23(d) of the Agreement and a mutual understanding of Rule 23(d) reached between the parties in 1946 as to the proper construction to this Rule.

The Carrier did not violate the effective Agreement as it was permitted to use employee B. R. Nelson under Rule 23(d) which reads as follows:

"(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. In cases where he may relieve an Agent at the station where he is employed, he will receive the rate of the Agent relieved, with no allowance for expenses."

and also under the mutual understanding reached by the parties in 1946 as to the proper construction of this Rule. Award 8147.

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: S. H. Schulty
Secretary

Dated at Chicago, Illinois, this 11th day of December 1959.