

Award No. 9755
Docket No. TE-8655

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island & Pacific Railroad that:

1. The Carrier violated, and continues to violate, the terms of the prevailing agreement between the parties hereto when, beginning June 3, 1955, and continuing on various dates thereafter, it suspended from work, during regular assigned hours, Telegraphers L. A. Doree and W. H. Franklin at its Cadiz Street Yard Office, Dallas, Texas, and
2. Carrier shall be required to pay the senior, idle telegrapher, on the seniority district involved, a day's pay of eight (8) hours at the prevailing rate, for each day of such violation, and
3. Carrier shall be required to reinstate the third shift telegrapher position at its Cadiz Street Yard Office, Dallas, Texas.

EMPLOYES' STATEMENT OF FACTS: There is in existence, between the parties hereto, an agreement bearing an effective date of August 1, 1947, as to rules and working conditions, and of September 1, 1947 as to rates of pay, all applicable provisions of which, as amended, are here invoked. Such rules or provisions which apply in this dispute will be quoted, as Employees' Statement of Position is developed.

Prior to September 18, 1953, Carrier, under the Telegraphers' Agreement, maintained the following positions at its Cadiz Street Yard office:

Position	Hours	Rest Days
1st Telegrapher	7:00 a.m. to 3:00 p.m.	Friday-Saturday
2nd Telegrapher	3:00 p.m. to 11:00 p.m.	Sunday-Monday
3rd Telegrapher	11:00 p.m. to 7:00 a.m.	Tuesday-Wednesday
Relief Telegrapher No. 10	Various	Wednesday-Thursday

Note: The Wednesday shift on 3rd trick was assigned to another Relief position working one night at Cadiz Street, 4 shifts elsewhere.

Effective September 18, 1953, Carrier declared the third telegrapher position abolished, and established assignments for remaining positions in the office as follows:

For all of the above reasons, the instant claim should be declined and we so petition your Board.

It is hereby affirmed that all of the foregoing is, in substance, known to the organization's representatives.

OPINION OF BOARD: On September 13, 1953, there were three telegraphers and a relief operator at the Cadiz Street Yard in Dallas, Texas, and on that date the third telegrapher position was abolished. L. A. Doree holds the regular assignment as second telegrapher and W. H. Franklin is in relief position 10, relieving both first and second shifts on rest days.

Several changes in hours were made until November, 1955 since which time the first telegrapher works from 6:15 A.M. to 2:15 P.M. and the second telegrapher from 3:15 P.M. to 11:15 P.M.

When it is foreseen that the service of the operator on the second shift will be needed after 11:15 (for sometime it was 10:45) his service is suspended for an hour or two and he is instructed to report when required; similar steps are taken with reference to operator of the first shift if need develops.

Carrier thus attempts to avoid violation of the Hours of Service Act forbidding it to require or permit employes handling train orders to work in excess of nine hours in a twenty-four hour period; and Employes assert that Carrier also evades "reinstatement of the needed 3rd telegrapher position."

The Carrier, of course, pays straight time for the entire eight hour shift and in addition time and one-half, or call time, for the added service.

Employes claim violation of (a) Rule 3 providing that "Eight consecutive hours, exclusive of meal hour, shall constitute a day's work"; (b) Rule 5 that the hours of duty of telegraphers shall be fixed by the Superintendent; (c) Rule 12-a that "Regular assignments will have a fixed starting time which shall not be changed without at least 48 clock hours advance notice; (d) Rule 13 (c) that "Employes will not be required to suspend work during regular hours * * *," and (e) that there was no real abolition of the third telegraph position.

Carrier denies all of the Employes contentions, and then asserts that this Board has no jurisdiction because claim was not filed in the name of an individual employe.

Whether payment for "Eight consecutive hours" regardless of whether they are worked is sufficient compliance with Rule 3 need not be decided because of the view we take of this controversy.

There is indication in the file that the hours of the employes were fixed by the Superintendent as required by Rule 5, and also the assertion, stoutly denied, that the Chief Dispatcher fixed some hours, so that the evidence is vague as to whether a violation in this respect occurred.

In our judgment Rule 12 was complied with.

We believe, however, that Rule 13-c, providing that "Employes will not be required to suspend work during regular hours" means what it says and, as interpretation is the function of this Board, we must conclude that in this regard there was a violation by the Carrier.

Reference should also be made to the assertion of Employees that "there was no real abolition of the third telegraph position" and that it should be restored on account of the work load available. It will be recalled that this Board in Award 5235-Boyd said that though:

"Carrier may not abolish a position while the work remains, likewise it need not establish an assigned position until the volume of work warrants, but may use an employee from the extra list."

A careful review of the file shows that, according to Employees figures, during the period from May 19, 1954 to October 14, 1956, embracing 879 days, there were 174 calls—or in other words a call occurred on about twenty percent of the days. By multiplying the 879 days by eight (hours per day) we have 7032 hours. The Carrier asserted, without denial, (and a partial tabulation placed in the record by Employees seems to confirm) that each call averaged about an hour and eighteen minutes, which when multiplied by 174 calls would be 226 hours of overtime or call work. If we compare the 226 hours with 7032 hours we will see that if the abolished shift is restored it would only have work about one-thirtieth of the time. This may not be the only test but it is so striking that under the circumstances the Carrier was justified in abolishing the position.

As to Carrier's point on jurisdiction, see Award 9205-M. Stone, and Award 6063-Wenke, where it was said by this Board that "as to who gets the penalty is but an incident to the claim and not a matter in which the Carrier is concerned."

In view of the circumstances herein the allowance should be for only the actual call time paid.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute the 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 herein; and

That the Carrier violated the Agreement to the extent set forth in the Opinion.

A W A R D

Claim sustained to the extent set forth in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 16th day of December, 1960.

DISSENT TO AWARD NUMBER 9755, DOCKET NUMBER TE-8655

There is a decided difference between requiring employees to suspend work during regular hours (Rule 13-c) without pay therefor, on the one hand, and on the other hand releasing employees for rest during regular hours, with pay

therefor, in order that they may be available under the Hours of Service Act for a call to perform work not continuous with the regular work period for which they also receive the stipulated allowance. Literalism should not be pressed to absurdity. Award 9755 errs in applying Rule 13 (c) to sustain the claim under the circumstances of this case.

Carrier Members' dissents to Awards 9545 and 9759 concerning penalties are also made a part of this dissent by reference.

/s/ J. F. Mullen

/s/ R. A. Carroll

/s/ P. C. Carter

/s/ W. H. Castle

/s/ D. S. Dugan