

Award No. 10056
Docket No. TE-8616

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Frank J. Dugan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY
THE NEW YORK AND LONG BRANCH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Central Railroad of New Jersey, that:

1. The Carrier violated the agreement between the parties beginning on December 13, 1953, it blanked the first trick ticket agent-operator position a 7-day position, at Allentown Station, Pa., on Sundays and Holidays and delivered the work of handling messages and reports to the first trick Operator at Allentown Yard.
2. The Carrier shall restore the position of first trick ticket agent-operator to a seven-day position.
3. The Carrier shall compensate incumbent of the first trick ticket agent-operator for eight hours at the time and one-half rate for each holiday the work is transferred to the yard office from the passenger station.
4. The Carrier shall compensate the senior idle extra employe an amount equivalent to eight hours pay at the pro rata rate for each Sunday the work is transferred to the yard office, and if no extra idle employe was available, then the incumbent of the first trick ticket agent-operator position shall be paid eight hours at the time and one-half rate.
5. Carrier shall compensate E. A. Hultsch who held the Sunday relief assignment of first trick ticket agent-operator position as part of a regular relief cycle and other regular relief employes whose positions or assignments have been changed due to the transfer of work to Allentown Yard Office under the provisions of Article 22 for the time they have been used off of their regular positions or assignments until they are returned by the Carrier to their regular positions or assignments.

3. Unreasonable delay in progressing appeal to your Board;
this claim should be denied in its entirety.

The Carrier affirmatively states that all data contained herein has been presented to the Employees' representatives.

OPINION OF BOARD: The Carrier first contends that the claim is not properly before the Board because the organization did not "expeditiously progress" it to this Division.

The facts show that the claim was filed on December 30, 1953. The claim was denied on March 31, 1954. On December 29, 1955 the Organization sent a notice of intent to file an ex parte submission with this Division, a delay of some twenty-one months.

On August 21, 1954 the parties negotiated a time limit rule. Article V, Section 2 provides:

"... except that in the case of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule, a period of 12 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment as provided in paragraph (c) of Section 1 hereof before the claim or grievance is barred."

This rule became effective January 1, 1955. The notice of appeal to this Board was made on December 29, 1955 within the time set out by the parties. Hence, the claim is properly before the Board. Award 9776, 8040, 8043.

The Allentown, Pennsylvania Passenger Station is approximately two miles from Allentown freight yard. On December 13, 1953, the Carrier abolished the position of the First Trick Ticket Agent-Operator at the Allentown Passenger Station on Sundays and holidays and early morning reports were sent by jeep from the Passenger Station to Allentown Yard for transmittal by the operator there to Jersey City.

The issue is whether the Carrier is permitted to "blank" the first trick ticket agent-operator's position on Sundays and holidays at the Allentown Passenger Station and transfer the work to an operator of the same craft and class within the same seniority district.

The Organization relies primarily as to the blanking of the rest day on Award 6212 where this Division held that under the provisions of the 40-Hour Agreement assignment of relief employes is not a condition precedent to the establishment of seven-day positions where the work week assignment of employes may be staggered so the work days of some may coincide with the rest days of others. This opinion also held that the staggering of work week assignments was not intended to transfer work on rest days of seven-day positions from one facility to another.

On this same point the Carrier primarily relies on the reasoning of Award 6946 (and numerous awards following it) and Award 9119 where this Division held:

"The question to be decided by this Board is whether or not the Carrier may stagger the work which remains to be performed on an unassigned day and assign it to an employe at another loca-

tion. This question of staggering work that remains to be performed on an unassigned day has been discussed in Award 6946. On the basis of the reasoning of that Award, the Carrier had the right to combine the remaining work of the third shift at Waterville Yard with the work at Tower "A" arising between 10:00 P. M. and 6:00 A. M. on Saturday night, as the telegraphers at Waterville Yard and Tower "A" are both of the same class and craft and both in the same seniority district and are carried on the same seniority roster, and the Towerman-Telegrapher at Tower "A" is qualified to perform the work of the Clerk Telegrapher at Waterville Yard."

It would seem that if the Carrier can stagger work weeks on one facility under the 40-hour agreement so as to obviate the use of relief assignments (as numerous awards of this Division hold) that no valid reason exists why the work week cannot be staggered between nearby facilities provided the work is assigned to an operator of the same craft and class within the same seniority district.

The organization further contends that the Carrier violated the agreement when it blanked the holidays on first trick ticket agent-operator position at the Allentown Passenger Station and transferred the work to the Allentown Yard. The organization relies on Article 21, Section 2 relating to holiday work. This section merely describes pay rates for time worked on holidays and does not relate to blanking holidays and transferring work to another facility to be performed by an operator of the same class in the same seniority district. We see nothing in the agreement which precludes such a transfer. The organization relies on Awards 4775, 5824 and 9203. In Awards 4775 and 5824 different holiday provisions were involved. In Award 9203 the claim was for the transfer of telegrapher's work to persons not covered by the Agreement. Hence, they are not applicable.

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 the Agreement was not violated.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of September, 1961.