

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

James P. Carey, Jr., Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk and Western Railway that the Carrier violated the agreement between the parties:

(a) When, beginning Monday, November 30, 1953, it improperly assigned the agent-operator to perform the rest day relief work of the operator's position at Galax, Virginia; and that

(b) The Carrier shall be required to pay to the senior available extra employe eight (8) hours' pay at the straight time rate, or if none available, eight (8) hours' pay at the rate of time and one-half to the regular incumbent of the operator's position, for each Monday that the operator was so relieved.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties to this dispute are by reference thereto made a part of this submission.

This claim arises out of Carrier's improper assignment of the Agent-Operator at Galax, Virginia, to perform rest day relief work on the operator's position at this same location on each Monday beginning, November 30, 1953.

Galax, Virginia, is on the Radford Division of the Carrier. The Wage Scale of the effective agreement at page 37 lists:

	* * * * *	
"Galax	A. & O.	.76
	O. & C.	.69
	* * * * *	

Legend: A. O. Agent Operator
O. C. Operator Clerk"

As also stated in the Carrier's Statement of Facts, the agent-operator at Galax station was on September 1, 1949 assigned to work Monday through Friday with rest days Saturday and Sunday. The operator on Saturdays between September 1, 1949 and February 9, 1954 (the date the operator's position was abolished as shown in the Statement of Facts), performed the work the agent-operator had performed on Saturdays prior to September 1, 1949. It is significant the Employees have never claimed the operator could not properly perform on Saturdays between September 1, 1949 and February 9, 1954 the work required on Saturday which was performed by the agent-operator Monday through Friday. The Carrier asserts that there is no distinction that can properly be made between all the work of the craft at Galax station on Saturdays being performed by the operator and all the work of the craft on Mondays being performed by the agent-operator. The Carrier re-asserts that as the agent-operator and the operator involved in the instant case were covered by the same agreement and were on the same seniority roster, it was proper under the Forty Hour Week Agreement rules it cites, as interpreted by your Board, to assign the agent-operator to perform all work of the craft at Galax station on Mondays between November 30, 1953 and February 9, 1954 in the same manner as it had assigned the operator to perform all work of the craft at this station on Saturdays from September 1, 1949 to February 9, 1954.

It is the position of the Carrier the Employees' claim is not supported by any schedule rule, therefore, denial of the claim is respectfully requested.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 1, 1949, the effective date of the Forty Hour Week Agreement, an Agent-Operator and an operator were assigned at Galax, Va., from 8 A. M. to 5 P. M. with one hour for lunch, Mondays through Saturdays. Sunday was their assigned rest day. The Agent-Operator and the operator were hourly rated, on the same seniority roster and governed by the provisions of an Agreement between the Carrier and the Order of Railroad Telegraphers.

On and after September 1, 1949 the Galax station was continued in six days operation but the assignments of these two employees were reduced to five days and re-arranged. The Agent-Operator was assigned to work Monday through Friday with rest days on Saturday and Sunday. His position was not filled on his rest days. The operator was assigned to work Monday, Wednesday, Thursday, Friday and Saturday, with rest days on Sunday and Tuesday. A regularly assigned relief Employee worked at Galax on Tuesday. On Saturdays the regularly assigned operator performed his normal duties and handled some work which had theretofore been performed by the Agent-Operator. Effective November 30, 1953 the operator's assignment was changed to Tuesday through Saturday with rest days Sunday and Monday. After November 30, 1953 the Agent-Operator performed on Monday all the station work normally performed previously by the Agent-Operator on that day prior to November 30, 1953. The Operator position at Galax was abolished February 9, 1954.

The Employees maintain that on and after November 30, 1953 the Carrier failed to observe the Forty Hour Week Agreement in the following respects:

1. That it disregarded a requirement that it provide a regular relief assignment to do the necessary work of the operator's position on Mondays,

and wrongfully directed the Agent-Operator to perform relief service on the operator's rest day.

2. That in the absence of a regular relief assignment, the Carrier was confined to a choice of two alternatives to cover work on the rest day of the position, viz: appoint an extra Employee, or call the regular occupant of the operator's position to perform the work on his assigned rest day.

The Carrier maintains that its action was consistent with the purpose and intent of the Forty Hour Week Agreement.

The Employees state that the single point at issue is whether or not the Carrier can provide rest day relief at Galax by combining the work of two distinct classifications—Agent-Operator and Operator-Clerk—on the rest day of the latter, and thus compel the Agent-Operator, a regularly assigned Employee, to perform extra relief service. Hence, they say, the question of staggered rest days is not a point at issue in this case.

The Brotherhood refers to the rule which provides that "all possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven day service or combinations thereof". They maintain that the nature of the work at Galax is necessary six days each week and therefore they contend the language of the rule just quoted supports their position.

Following the effective date of the Forty Hour Week Agreement in September 1949, numerous disputes arose in respect of various aspects of its application. In the ensuing years a substantial number of Awards have been issued by this Board dealing with the application of said Agreement.

It is unnecessary to review all of them in detail inasmuch as the two irreconcilable points of view in respect of the issue again raised in this case have been fully considered and discussed in Awards Nos. 6688 and 6946. The Employees rely on the former and the Carrier on the latter.

We have again reviewed these decisions which are clearly in disagreement on the essential point involved, and are persuaded that the logic of the reasoning in our Award 6946 should be adhered to in this case. If the holding in Award 6688 were applied to the factual situation presented in this record it would tend to an emasculation of the staggered work week provision of the Forty Hour Week Agreement. That was evidently a quid pro quo for the Agreement. On the basis of the instant record we conclude that for the reasons well stated in Award 6946 the Applicable Agreement was not violated.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1961.