

Award No. 10523

Docket No. TE-8433

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

James P. Carey, Jr., Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
BESSEMER AND LAKE ERIE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Bessemer and Lake Erie Railroad, that:

(1) The Carrier is in violation of the agreement between the parties when it combined the work of the Clerk Operator with the work of the Agent at Girard, Pa., each Monday, beginning with the first Monday, following September 1, 1949, continuing until the violation is corrected, requiring the Agent to perform such combined duties on each such Monday, the assigned rest day of the Clerk Operator, and

(2) When it combined the duties of the Agent with the duties of the Clerk Operator each Saturday for the same period of time named in paragraph (1), requiring the Clerk Operator to perform such combined duties on each Saturday, the assigned rest day of the Agent, and

(3) The Carrier shall now compensate the senior idle extra Clerk Operator for eight (8) hours for each Monday and the senior idle extra Agent eight (8) hours for each Saturday since September 1, 1949, at the straight time rates of the positions named in paragraphs (1) and (2), and if no such extra idle available Agents and Telegraphers then the Carrier shall compensate the regular occupant of the positions of Agent and Clerk Operator at Girard for eight (8) hours at the time and one-half rate for each such Monday and Saturday that such violations of the agreement existed.

(4) Where a holiday is involved, compensation for any employee shall be at the time one one-half rate.

POSITION OF EMPLOYEES: There is an Agreement in effect between the parties which by this reference is made a part of this submission. The Employees point out the following Rules in support of their claim:

"Rule 2A(e) Regular Relief Assignments — All possible regular relief assignments with five (5) days of work and two (2) consecutive rest days will be established to do the work necessary on rest days of

on the same seniority roster (Rule 17); and both are paid an hourly rate of pay.

Without prejudice to its position, as previously set forth, the Carrier further asserts that the Organization's claim if no available extra Agent and/or extra Clerk-Operator for eight (8) hours' pay at time and one-half rate in favor of Clerk-Operator H. V. Hilgendorf and for Agent W. B. Miller for eight (8) hours at time and one-half rate for work not performed on Monday and Saturday, respectively, also where a holiday is involved, is contrary to the well-established principle consistently recognized and adhered to by the Third Division of the National Railroad Adjustment Board, that the right to work is not the equivalent of work performed under the overtime and call rules of an Agreement. (See Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, 5967 and others.)

The Carrier points out that although the assignments on which these claims are based have been in effect since September 1, 1949, no claim or protest was registered until October 17, 1952, over three (3) years after the first occurrence and the claims should be barred.

The Carrier's position in this case is supported by Third Division, National Railroad Adjustment Board, Award No. 6001, Docket No. TE-5926, the Order of Railroad Telegraphers vs. Union Pacific Railroad Company, Eastern District, with Referee Carrol R. Daugherty participating, which denied a claim similar to the claim in the instant case, account the duties of an Agent and Telegrapher-Clerk being combined on assigned rest days; also, its companion Award No. 6002, Docket No. TE-5927, the Order of Railroad Telegraphers vs. Union Pacific Railroad Company, Eastern Districts.

In Third Division Award No. 6946, Docket No. TE-6671, the Order of Railroad Telegraphers vs. the Atchison, Topeka and Santa Fe Railway Company (Eastern Lines), with Referee Edward F. Carter participating, a like claim was denied.

This dispute has been handled in the usual manner up to and including the chief operating officer of the Carrier as prescribed by the Railway Labor Act. All data submitted in support of the Carrier's position were presented to the employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: In its essential aspects, this claim is not distinguishable from the claim which led to our Award No. 10236. We see no valid reason for reaching a different result in this case and accordingly hold that the instant claim lacks merit.

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 17th day of April 1962.