Award No. 11367
Docket No. TE-10479

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway that:

1. (a) Carrier violated the Agreement between the parties when it failed and refused to pay the occupant of the telegrapher-clerk position at Fort Dodge, Iowa for service performed during his assigned meal period on December 8, 1956 and subsequent dates through April 7, 1957.

(b) Carrier shall compensate the occupant of the position, F. G. Daenzer, Tuesdays through Saturdays and J. E. Judson, regular relief operator on Sundays and Mondays, one hour's pay at the time and one-half rate on each day the violation occurred during this period of time.

2. (a) Carrier further violates the Agreement between the parties when effective April 8, 1957 it assigned an improper meal period to the position of telegrapher-clerk at Fort Dodge, Iowa and refuses to assign a proper meal period.

(b) Carrier shall be required to assign a meal period in accord with the rules of the Agreement and to compensate the occupant of the position for one hour at the time and one-half rate each day commencing April 8, 1957 and continuing thereafter until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Fort Dodge, Iowa, is a station on this Carrier's lines. There are two positions covered by the Telegraphers' Agreement at this station. One position of Agent is covered by Addendum No. 2 to the Agreement and is listed in Group No. 1 of that Addendum; it is excepted from a number of the rules of the agreement and is not involved in the instant dispute. Due to the ex-

Record also shows that claim stems from the erroneous contention of the Employes that at one shift offices a meal period must be assigned the same time each day; whereas, Rule 6 merely provides that the meal period will be allowed between 11:30 and 1:30 o'clock, day or night. Finally, the record shows that claimants were instructed to take a one-hour meal period "per schedule rule" and that a one-hour meal period was taken between 11:30 P. M. and 1:30 A. M. Rule 6 specifically provides that the penalty sought by the Employes is allowable only if the employe is not excused for the meal period between 11:30 and 1:30 o'clock, day or night. Neither the facts nor the rules support the Employes' claim and same should be denied.

Carrier affirms that all data in support of its position has been presented to the other party and made a part of the particular question in dispute.

OPINION OF BOARD: The issue is whether Rules 6(a) and 14(d) of the Agreement between Carrier and Telegraphers, effective June 1, 1948, require Carrier to assign fixed meal periods at one shift offices.

The pertinent rules read:

"RULE 6.

(a) (Meal Period) Where but one shift is worked employes shall be allowed sixty (60) consecutive minutes between 11:30 and 1:30 o'clock, day or night, for meal.

If not excused for the meal period as herein provided, the employe shall be paid one (1) hour at overtime rate and excused twenty (20) minutes with pay, in which to eat, at the first opportunity."

"RULE 14.

(d) (Classification - New Positions - Transfers - Filling Vacancies.) Vacancies and new positions will be bulletined on the first and fifteenth of each month (or more frequently if desirable) to all offices on the division on which they occur, and copies furnished to Local and General Chairman, and will show rates of pay and **hours of assignment of positions** bulletined and also the names of employes assigned to positions bulletined on the immediately preceding bulletin. . . ." (Emphasis ours.)

At Fort Dodge, Iowa, at all times material, Carrier had a seven (7) day position of telegrapher-clerk. Regularly assigned to this position, at least during the period from December 8, 1956 to January 22, 1957, was Claimant Daenzer; and, Claimant Judson was the regularly assigned relief. The parties are agreed that it is a one shift position bringing it within the applicability of Rule 6(a) of the Agreement.

Telegraphers contend that Rule 6(a) requires Carrier to assign to the occupant of the position a fixed lunch hour of sixty (60) consecutive minutes between 11:30 P. M. and 1:30 A. M.

Carrier contends that the Rule 6(a) permits it to direct the occupant of the position to take his lunch hour for any sixty (60) consecutive minutes

between 11:30 P. M. and 1:30 A. M.; and, that Carrier can do this on a day to day basis.

The case is one of first impression. This Board has not previously interpreted the rules here involved. Cases cited by Carrier are inapposite.

Before we discuss the case on its merits we must first dispose of Carrier's argument that the claim as filed with the Board is not that handled on the property.

The claim filed with the Board has two parts. That part numbered 1(a) and (b) alleges that in the period from "December 8, 1956 and subsequent dates through April 7, 1957" Claimants had assigned lunch periods during which they were required to work without being compensated in accordance with Rule 6(a); and, each Claimant should be compensated at "time and one-half rate on each day the violation occurred during the period of time." The claim filed with the Carrier, on January 30, 1957, alleges as to Claimant Daenzer, that Rule 6(a) was violated on the following specific dates: December 8, 13, 15, 18, 19, 20, 1956 and January 10 and 22, 1957; and, as to Claimant Judson it was violated on December 16 and 17, 1956. As the claim filed with this Board is broader than but inclusive of the claim processed on the property we will not dismiss the claim. However, we will confine the claim to the dates specified in the claim initiated and processed by telegraphers on the property. To do otherwise would be beyond the jurisdiction of this Board.

The second part of the claim filed with this Board, numbered 2(a) and (b), concerns General Order No. 7, issued by Carrier on April 2, 1957, supplemented by a telegram dated April 3, 1957, which specified the hours of the telegrapher-clerk position, beginning April 8, 1957, as 8:45 P. M. to 5:45 A. M. "with one hour for lunch, as per schedule rule." Telegraphers aver that Carrier's failure to assign a fixed lunch period is a violation of Rule 6(a) and prays that Carrier be required "to compensate the occupant of the position for one hour at the time and one-half rate each day commencing April 8, 1957 and continuing thereafter until the violation is corrected." Telegraphers have not adduced proof, in the record, to support its claim for a monetary award under the second part of the claim. We will, therefore, limit our consideration of the second part to the issue as to whether the failure of Carrier to assign a fixed lunch period after April 7, 1957 violated the Agreement.

PART ONE OF THE CLAIM

There can be no doubt that if Claimants had an assigned fixed lunch period from December 8, 1956 to and including January 22, 1957 and were required to work during such fixed period the contract was violated if they were not compensated as provided for in the second paragraph of Rule 6(a).

There is a conflict in the evidence as to whether the Claimants had an assigned fixed lunch period prior to April 8, 1957. Telegraphers assert that from the effective date of the Agreement (June 1, 1948) to April 8, 1957 the position as bulletined and by circular had an assigned fixed lunch period. Also, during the period of claimed violations the assigned hours were 7:00 P. M. to 12:30 A. M. and 1:30 A. M. to 4:00 A. M. Carrier seeks to rebut by stating "Circular No. 38, dated October 24, 1956, last circular issued prior to period covered by Part 1 of claim (December 8, 1956, through April 7, 1957) shows hours of assignment 8:30 P. M. to 5:30 A. M., 'one hour for lunch per schedule rule.'" The Circular, if there was one, would have been the best evidence. Carrier failed to introduce it into the record. Due to this failure plus Carrier introducing no evidence that the position was in fact worked from 8:30 P. M.

to 5:30 A. M. after issuance of the Circular, without a fixed lunch period; and, the fact that when Carrier issued General Order No. 7 on April 2, 1957, it set an assigned fixed lunch period for the position, we find that the position did have an assigned fixed lunch hour, from 12:30 A. M. to 1:30 A. M., in the period from December 8, 1956 to and including January 22, 1957. Inasmuch as Carrier does not deny that Claimants were required to work during the assigned fixed lunch hour on the dates designated in the claim processed on the property, we will sustain the claim as to those dates.

PART TWO OF THE CLAIM

On April 2, 1957, Carrier issued General Order No. 7 in which it gave notice of change of the hours of the position here involved. The hours designated therein were 8:45 P. M. to 12:45 A. M. and 1:45 A. M. to 5:45 A. M. The assigned lunch hour obviously and admittedly violated Rule 6(a) which requires that the lunch hour be "between 11:30 and 1:30 o'clock, day or night."

On April 3, 1957, Carrier sent the following wire to the telegrapher-clerk at Fort Dodge:

> "Effective Monday, April 8, operator's hours Fort Dodge will be changed to 8:45 P. M. to 5:45 A. M. with one hour for lunch, as per schedule rule."

It is this failure of Carrier to assign a fixed lunch period which Telegraphers claim to be a continuing violation of the contract.

It is well established that in interpreting a particular provision of an Agreement it must be done in the light of the Agreement as a whole.

Rule 14(d) of the Agreement states:

> "Vacancies and new positions will be bulletined . . . and will show . . . hours of assignment of positions bulletined. . . ."

While we are not here concerned with a vacancy or a new position this Rule is an aid to contract interpretation. It supports the conclusion that the Carrier must designate "hours of assignment of positions." This raises the question: What is the meaning of "hours of assignment"?

Carrier argues that it satisfies the Rule if it sets the beginning time and the termination time of the basic day (Rule 2) and reserves to itself the right to direct an employe as to when he will take his lunch hour, on a day to day basis, so long as it is between 11:30 and 1:30 o'clock (Rule 6(a)).

We do not agree. To us "hours of assignment" cannot be construed to connote any open-endedness. Therefore, it follows, that Carrier is obligated by the Agreement to assign to the position here involved a fixed lunch hour within the period of time agreed to in Rule 6(a). This is not to be construed as meaning that the lunch period has to be assigned for the same fixed hour on every working day. It can be fixed for an assigned different hour on different days provided the employes have proper notice.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 violated.

AWARD

Claim is sustained to the following extent:

1. Carrier violated the Agreement by its failure and refusal to assign a fixed lunch period to the telegrapher-clerk position at Fort Dodge, Iowa, on and after April 8, 1957;

2. Claimant Daenzer is to be compensated for one hour at overtime rate for each of the following days: December 8, 13, 15, 18, 19, 20, 1956 and January 10 and 22, 1957; and

3. Claimant Judson is to be compensated for one hour at overtime rate for each of the following days: December 16 and 17, 1956. In all other respects the Claim is denied .

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April 1963.

CARRIER MEMBERS' DISSENT TO AWARD 11367, DOCKET TE-10479

Employes admit that meal periods "at one-shift offices had been assigned on some job vacancy circulars and not on others", (p. 8) prior to current agreement; thus, the employes' interpretation coincided with that of the carrier, or acquiescence in carrier's application of Rule 6 (a) as a floating meal period rule prior to the current agreement.

In **Award 11367**, the Referee states:

"The case is one of first impression. This Board has not previously interpreted the rules here involved. Cases cited by Carrier are inapposite." [Award, p. 2]

Following is a comparison of Rule 6 (a) and Rule 14 (d) of the agreement before us with similar rules of the agreement interpreted by the Third Division in **Award 131** cited and relied upon in this case by carrier:

AWARD 11367

Rule 6 (a)

Where but one shift is worked employes shall be allowed sixty (60) consecutive minutes between 11:30 and 1:30 o'clock, day or night, for meal.

Rule 14 (d)

* * *, and will show rates of pay and **hours of assignment** of positions bulletined and also the names of employes assigned * * *.

AWARD 131

Rule 48

When a meal period is allowed, it will be between the ending of the fourth and the beginning of the seventh hour after starting work, * * *

Rule 10

* * * Bulletin to show location, title, **hours of service**, and rate of pay.

Employes rely on the insertion of "hours of assignment" in Rule 14 (d) as nullifying carrier's right to a floating meal period, but as the comparison reveals, these rules are indistinguishable.

In denying the claim, the Opinion of Award 131 stated: (R., p. 13)

"The bulletins in controversy did show **hours of service** as required by Rule 10 of the Agreement between the parties in the sense that they specifically designated the beginning and ending of the service period. It may, of course, be contended, as was contended by the employes, that this rule, standing alone, requires that bulletins of positions shall show nothing but service hours. Rule 10, however, does not stand alone; it must be read in connection with Rule 48, which provides that 'when a meal period is allowed, it will be between the ending of the fourth and the beginning of the seventh hour after starting, unless otherwise agreed upon by the employes and employer.' This rule permits the carrier to indicate a meal period between the ending of the fourth and beginning of the seventh hours of a service period, but does not require him specifically to designate the period."

The Referee dismisses Award 131 with the statement that "cases cited by carrier are inapposite," but as the above comparison reveals, this award is an interpretation by this Board of the same rule that was before us in **Award 11367**; therefore, it is controlling precedent and should be followed.

For the above reasons, we dissent.

W. M. Roberts
R. E. Black
W. F. Euker
R. A. DeRossett
G. L. Naylor

Serial No. 205

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Interpretation No. 1 to Award No. 11367

Docket No. TE-10479

Name of Organization:

THE ORDER OF RAILROAD TELEGRAPHERS

Name of Carrier:

CHICAGO GREAT WESTERN RAILWAY COMPANY

Upon application of the Carrier involved in the above Award, this Division was requested to interpret same because of an alleged dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act.

The parties are in disagreement as to how much notice an employe must *have before Carrier can effectuate a change in his assigned lunch hour.*

Carrier's position is that the Award provides for "proper notice," and, since that phrase does not prescribe the period of time required from notice to effectuation, it is ambiguous. Each of the parties has asked this Division to set a time limitation but disagree as to what it should be.

Inasmuch as the Agreement prescribes no time limitation, if we did so we would be writing a new rule. It is well established that such an action is not within our powers. Therefore, we find that the requests of the parties is not within the contemplation of "interpretation" as that term is employed in Section 3 First (m) of the Act.

As to all other facts, issues, questions and arguments contained in the Request for Interpretation, we find they are not properly before us.

Referee John H. Dorsey, who sat with the Division, as a member, when Award No. 11367 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 25th day of June 1964.