

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

TENNESSEE CENTRAL RAILWAY COMPANY

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

1. Carrier violated Agreement between the parties hereto when on March 31; April 14, 21; May 5 (Saturdays) and May 13 (Sunday), 1956, it failed and refused to call or permit Operator-Clerk J. R. Tarpley to perform work of his position at Emory Gap, Tennessee after 11:00 A.M. on the above dates, his regular assigned hours being 11:00 A.M. to 7:00 P.M., Monday through Friday; he being entitled to perform the work of his position of Operator-Clerk on Saturdays after 11:00 A.M. when a regular rest day relief employe or extra man is not used.

2. Carrier shall compensate Operator-Clerk J. R. Tarpley for one call (2 hours) at time and one-half pro rata rate (\$2.925 per hour) for each date of violation as set forth in paragraph 1 on March 31; April 14, 21; May 5, 1956 and one call (3 hours) at time and one-half rate (\$2.925 per hour) for May 13, 1956.

EMPLOYES' STATEMENT OF FACTS: There are in full force and effect collective bargaining agreements entered into by and between The Tennessee Central Railway Company, hereinafter called Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The basic rules agreement, effective May 1, 1924, has been amended. The agreement as amended is on file with this Division and is by reference included in this submission as though set out herein word for word.

The dispute submitted herein involves interpretation of the collective bargaining agreements and was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes, and failed of adjustment. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the subject matter and the parties hereto.

The basic dispute concerns failure of the Carrier to comply with the provisions of Rule 8, Section 1, Paragraph (n), reading as follows:

(Exhibits not reproduced.)

OPINION OF BOARD: At Emory Gap, Tennessee, two regular positions worked as follows: One position classified as agent-operator, assigned hours 7:00 A. M. to 4:00 P. M. Monday through Saturday, with Sunday the assigned rest day. The second position, classified operator-clerk, assigned hours 11:00 A. M. to 7:00 P. M. Monday through Friday, with assigned rest days Saturday and Sunday. From 7:00 A. M. until 11:00 A. M. the agent-operator performs service as an operator as required. The Organization claims that after 11:00 A. M. all operator duties were performed by the operator-clerk. The Claimant, occupying the position classified as operator-clerk, 11:00 A. M. to 7:00 P. M., makes claims as follows: For Saturday, March 31st, when the agent-operator was held overtime after 4:00 P. M. and performed service at 5:10 and 6:01 P. M.; for Saturday, April 14th, when the agent-operator performed service during his regular working hours but after 11:00 A. M., as an operator; for Saturday, April 21st, when the agent-operator was held over after 4:00 P. M., working overtime to perform service as an operator at 5:37 P. M.; for Saturday, May 5th, when the agent-operator was held over after 4:00 P. M. to perform service as an operator at 4:40 P. M.; and for Sunday, May 13th, when the agent-operator performed service at 1:10 P. M.

The claims were handled on the property as claims for 8 hours pay at time and one-half rate for operator-clerk J. A. Tarpley. While the claims arose in March, April and May of 1956, as late as December 20, 1956, these claims were handled as 8 hour claims, then on April 11, 1957, the General Chairman wrote on that date to Caskey Knott, Supervisor of Wages, stating

"Upon further examination of this file, I find that it may have been possible for this work to have been performed within the time limit of a call; therefore, we are amending this claim to a call on each of these dates instead of 8 hours, as follows:"

Subsequently, on April 30th, an ex parte submission to the Board outlined the claims as one for a call. The Carrier alleges this was not the same claim as was progressed on the property. However, on May 1, 1957, Caskey Knott, Supervisor of Wages, wrote:

"The basis for our declination of the claim was that it is not supported by rule or otherwise, in view of which we would not care to change our conclusion by reason of a reduction in the amount of the claim."

Thus, no objection was made to the change of claim on the property, nor was this issue raised in the Carrier's ex parte submission, and on page 29 of the record in Carrier's ex parte submission, the following language is found:

"General Chairman Wiggerman's letter of April 11, 1957 (Carrier's Exhibit No. 8) amended the claim to a minimum call for each of the dates involved, and his request for settlement on that basis was declined by the Supervisor of Wages in his letter of May 1, 1957 (Carrier's Exhibit No. 9)."

Thus the issue was not timely raised, and cannot be raised upon final argument.

The Employees allege a failure of the Carrier to comply with the provisions of Rule 8, Section 1, Paragraph (n) which reads as follows:

"Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work in that week; in all other cases, by the regular employe."

Here it is employees' position that while the agent-operator and the operator-clerk both were operators, that because the operator-clerk after 11:00 A. M. performed the bulk of the operating services, he alone could perform the work of operator after 11:00 A. M. The position is not tenable. They were both qualified to do the work. The agent-operator, being a member of the same craft, could perform the operator's work at any time he was on duty. Thus, the agent-operator being on duty on April 14, at 3:20 P. M. during his regular tour of duty, was fully qualified to perform the work of operator at that time, and the claim for April 14 cannot be allowed. The claims for March 31, April 21 and May 5, are claims during which time the agent-operator was performing after 4:00 P. M. upon an over-time status, being held over after the assigned hours of his position, on Saturday. Thus the work on these days, March 31, April 21 and May 5, if they had occurred on a weekday, Monday through Friday, would be the work of the position of the Claimant, he being the regular occupant of that position. Awards 4775 and 5760 in similar instances have ruled that this work is the work of the Claimant, and the claims for these days must be sustained. The claim for May 13th at 1:10 P. M., concerned a period at which time both the agent-operator and the operator-clerk on week-days, were on duty. May 13th, being a Sunday, was a free day for both positions. Thus, being between the hours of 11:00 A. M. and 4:00 P. M. and on a free day of both positions, it was the work of either position, and the claim cannot be sustained.

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 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 involved herein; and

That the Claimant was entitled to perform the work on a call basis when such work was performed during the regular assigned hours of his position, and not during the regular hours of the agent-operator position, such being the case, on March 31st, April 21 and May 5th. In accordance with the above opinion, the claims should be sustained, on those dates.

AWARD

Claims sustained for March 31, April 21 and May 5th.

Claims denied for April 14, and May 13.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1963.