

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado and Sounthern Railway, that:

1. Carrier violated the Agreement between the parties when on Sunday, May 5, 1957, it blanked the second shift telegraph position owned by R. H. Rope at "DA" Office, Trinidad Yard.
2. Carrier shall now compensate Telegrapher Rope for eight (8) hours' at the time and one-half rate when it failed to use him to work on the regular rest day of his position, Sunday, May 5, 1957.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties dated January 1, 1955. Copies are on file with the Board and by this reference made a part of this claim.

At "DA" telegraph office in Trinidad Yard there are two telegrapher positions working seven days each week. The first shift works 5:00 A. M. to 1:00 P. M., rest days Saturday and Sunday, filled by rest day relief man. The second shift position works 1:00 P. M. to 9:00 P. M., rest days Sunday and Monday, filled by a rest day relief man.

In this instant claim, Claimant R. H. Rope held the position as second-shift telegrapher at Trinidad Yard Office, known as "DA" Office. As indicated, he was scheduled to work Tuesday through Saturday each week, with Sunday and Monday as rest days. The position was scheduled to be filled each Sunday and Monday by Rest Day Relief Man G. H. Tucker, regularly assigned to relief position No. 4, which included the two rest days of the position held by Claimant Rope.

On Sunday, May 5, 1957, Rest Day Relief Man Tucker was not available to fill the rest day assignment of Claimant Rope. Instead of calling out Claimant Rope to perform work on his regular position when Rest Day Relief Man Tucker was not available, Carrier blanked the job.

The work belonging to the second-shift telegraph office at Trinidad Yard on May 5th was transferred to other employees located in Trinidad Ticket Office to handle. See Employees' Exhibits Nos. 1 to 5, inclusive, attached hereto for proof of the type of work unilaterally transferred on this date.

exacted for time not worked is at the pro rata rate and not the time and one-half rate, as sought in the instant claim.

In conclusion, the Carrier urges that your Board not jeopardize the basic prerogative invested in Management of unrestricted operation of the railroad, except as the organization can definitely show that the provisions of some agreed-to rule, understanding, well-established or regulation prescribed by government authority positively prohibits the procedure made subject of protest. The Carrier, in the instant circumstances, most assuredly did not blank the position in question by laying off the occupant thereof or by instructing him not to report for work, but, instead, the incumbent employee was absent by his own choosing for personal reasons.

The evidence herein and herewith presented conclusively shows and the Carrier respectfully reiterates that the instant claim is completely devoid of agreement substantiation, therefore, should, for the reasons summarized herein, be unequivocally denied.

The Carrier being uninformed of the argumentation that the Petitioner may resort to in his ex parte submission reserves the right to submit such additional facts, evidence and confutative analyses as it may decide are essential in making a thorough response thereto.

All data herein and herewith submitted has, in substance, been made known to the duly authorized representatives of the Employees on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned to the second shift, a seven-day week assignment, hours from 1:00 P.M. to 9:00 P.M., rest days on Sunday and Monday.

The regularly assigned relief Telegrapher usually worked the 1:00 P.M. to 9:00 P.M. assignment on Sundays but on claim date (May 5, 1957) was granted permission to take that day off due to illness in his family. The Carrier then blanked the position for that day.

No extra employe was available to fill the vacancy. Claimant was not called to perform the work of the position which was handled partly by train dispatchers and the rest by telegraphers working in a ticket office some distance from the yard office where the position was located.

The basic premise upon which this claim is advanced is that the work of a position blanked on a rest day of the regular incumbent may not properly be performed by other than the relief employe regularly assigned to fill the position on rest days or by a qualified extra man; that in the absence of these employes, the incumbent must be called for the service on that day on an overtime basis.

The Petitioner's theory of the case poses no challenge to the right of the Carrier to blank a position. (cf. Award 11307.) The thrust of its argument goes to the propriety of blanking a position and then having the work done not by the regular incumbent but by others.

The principle that the work of a covered position must be assigned to a regular relief or qualified extra employe, and if neither is available, to the

regular occupant on an overtime basis, has been firmly established by many Awards of this Division. (2980, 4192, 4728, 4815, 5236, 6115, 9393 citing 5049.)

The foregoing principle clearly applies and is controlling under the facts here presented. Claimant had bid in and was assigned as the sole occupant of the second shift position located in the yard office. The work of that position was required to be performed seven days each week — a fact known to the Carrier when it advertised the job and when it blanked the position on May 5. Under the principle enunciated and established by the cited Awards of the Board, Claimant should have been used on an overtime basis.

Moreover, the Board has also held that a seven-day position may not be reduced to six-days by transferring work remaining to be done on the seventh day to others even where, as here, the latter employees were covered by the Agreement. In Award 5810 (Referee Carter) the following language is pertinent:

"The Carrier may, of course, under certain circumstances, abolish a position and transfer the remaining work to others, even to employees at another station in some cases. But the rules as interpreted by this Board do not permit a seven-day position to be reduced to six by allowing the work remaining to be performed on the seventh day to be done by an employee at another station. Such rest day work, if there is no regular relief man assigned, must be given to an extra man, if available, if an extra man is not available, to the occupant of the regular position on an overtime basis. See Awards 4728, 4815, 5333, 5475."

(cf. Awards 6212 and 11439.)

We agree with the Carrier that unless limited or barred by a specific agreement, it may unilaterally and properly decide how many employees are needed to perform a given task at a given location. (Award 7591, citing Award 6184). And, as was said in Award 5528, (Referee Whiting) "... the blanking of six day positions, because of the absence of the regularly assigned employee, is not in itself a violation of the Agreement . . ." (emphasis ours). These, and other Awards cited and relied on by Carrier, do not reach the narrow issue here presented: May the Carrier blank a rest day of the regular occupant of a seven-day assignment and, in the absence of both the regular relief employee and a qualified extra man, transfer the work of the blanked position on that day to some employees not covered by the agreement (dispatchers) and to others (telegraphers) performing service at another location?

Under the precedential authorities cited and held controlling here the Board finds that to do so violates the Agreement.

Carrier contends that, in the event of a sustaining Award, this Claimant is entitled to no more than payment at the pro rata rate, and cites a number of Awards which so hold. We think the proper measure of a Claimant's loss when work held to belong to him under the Agreement is improperly given to someone else is what he would have received had he performed the service. (See Award 11333 and Awards cited and relied on there.)

Accordingly, this claim will be sustained for payment at the rate of time and one-half, as set forth in the Statement of Claim.

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 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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July, 1963.