Award No. 12221
Docket No. TE-10943

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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 Southern Railway Company, that:

1. The Carrier violated the parties' Agreement when on January 1, 1958 (New Year's Day), and on February 22, 1958 (Washington's Birthday) it failed to fill the second shift Telegrapher's position in "DA" Yard Office, Trinidad (Colo.) and required or permitted an employe not covered by the Agreement, and an employe covered by the Agreement but at another location to perform work performed by the occupant of the unfilled position during the work week thereof.

2. The Carrier shall, because of the violation set out above, compensate R. H. Rope, the regularly assigned occupant of the second shift Telegrapher's position in "DA" Trinidad Yard Office, a day's pay at the time and one-half rate for each of said holidays on which he was deprived of the right to perform work attached to his position.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective October 1, 1948, as amended.

At Page 37 of said Agreement are listed the positions at Trinidad, Colorado, on the effective date of said Agreement. The listing is:

Trinidad (Passenger Station)	D.T.C.T.	$1.875
	N.T.C.T.	1.825
Trinidad (Yard Office)	T.	$1.935
	T.	1.935

Trinidad Yard Office is telegraphically identified by the "call" letters "DA." The Telegraph Office in the Passenger Station is similarly identified by the call letters "DX."

That part of the Wage Scale reproduced above indicated that there are two telegrapher positions in "DA" assigned seven days per week. The first

OPINION OF BOARD: There were two Telegrapher positions at Trinidad, Colorado. Claimant held the second shift position at the "DA" Yard Office with hours 1:00 P. M. to 9:00 P. M. The other position in the Yard Office worked between 5:00 A. M. and 1:00 P. M. They were seven-day positions. Claimant's rest days were Sunday and Monday which were worked by a regular assigned relief employe.

Carrier advised Claimant that he would not work on New Year's Day, January 1, 1958 and on Washington's Birthday, February 22, 1958. He was paid 8 hours at straight-time rate for each of the holidays as required under Article II of the August 21, 1954 Agreement. Both January 1 and February 22, 1958 were Claimant's regular work days; they were not his rest days.

On each of the two holidays train orders which would normally have been handled by Claimant were, instead, handled by the Train Dispatcher. Likewise, communications of record which would also have been handled by Claimant were, instead, handled by a Telegrapher at the "DX" office, the ticket office in the passenger station some distance from the "DA" Yard Office.

Petitioner contends that Claimant had a superior right to the work of his position which was performed on the two holidays and asks that Claimant be paid "a day's pay at the time an one-half rate for each of said holidays on which he was deprived the right to perform work attached to his position."

Carrier had the right to blank Claimant's position on each of the holidays and compensate him for the holidays not worked as required by the Agreement. But the record shows that Claimant's position was not blanked. Work which he would have performed was handled by others.

It is Carrier's position (1) that the work does not belong exclusively to Claimant or to the craft and (2) that Rule 29 permits Train Dispatchers to handle train orders. Rule 1, Scope does not define nor describe the work of the covered employes. It only lists the job titles. Under these circumstances it is incumbent upon the Petitioner to show that the work is traditionally, historically and customarily performed exclusively by Claimant. This the Petitioner has done as it is applied to an incumbent employe assigned to a regular position.

Claimant was regularly assigned to his position as Telegrapher at the "DA" Yard Office. His position was not abolished. As long as he was regularly assigned thereto he was entitled to work the second shift on Tuesdays through Saturdays inclusive. January 1, 1958 was a Wednesday and February 22, 1958 was on a Saturday. Both days were Claimant's regularly assigned work days. He had a superior right to work his shift on those days than any other employe. Carrier had the right to blank his position on those days, and if there was no work performed which Claimant would have normally handled, we would not be concerned with this claim. As the regularly assigned Telegrapher, he customarily, traditionally and historically had superior right to his work on those days.

In Award 10139 (Daly) we said:

> "In the case before us, the Claimant was prevented from working on Washington's Birthday, February 22, 1956, because the Carrier instructed him by a Bulletin dated February 9, 1956, that his services would not be needed on that day. The record discloses, however, that

Claimant's services were needed on February 22, 1956, as evidenced by the clerk telegrapher's work performed by the Chief Train Dispatcher — work which Claimant would have performed had he been permitted to work on that day. The work performed by the Chief Train Dispatcher constituted a violation of the Scope Rule of the current Agreement — as that work clearly belonged to the Claimant."

While the facts in Award 11604 (Coburn) are not identical with those in this case, the principle is applicable. In sustaining the claim we said:

"May the Carrier blank a rest day of a regular occupant of a seven-day assignment and, in the absence of both the regular relief employe and a qualified extra man, transfer the work of the blanked position on that day to some employes not covered by the agreement (dispatchers) and to others (telegraphers) performing service at another location?

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

Carrier has cited Award 9217 (Hornbeck) where we denied the claim because the Agreement there involved contained a Rule similar to Rule 29 of the Agreement in this case. Rule 29 reads:

"No employe other than covered by this Agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in emergency, in which case the operator will be paid for the call. (See Appendix No. 9)"

In Award 9217 we held that:

"This Article clearly places telegraphers and dispatchers in like status in the right to handle train orders. So, here, unless there was some reason other than the alleged disqualification of the Train Dispatcher to do the work he was fully authorized to perform it under Article 20(d). He was located in the same building as the Telegrapher. He was qualified, eligible and had ample time to do the work involved. Claimant lost no regular pay by the assignment of the holiday work to the Train Dispatcher."

The conclusions reached in Award 9217 do not apply. First, the work of the Claimant was done by a Train Dispatcher. In this case, some of Claimant's regular duties were handled by a Train Dispatcher, but other of his duties were handled by another Telegrapher at another office. Since the work was performed on a shift which regularly belonged to Claimant, no employe whether another Telegrapher or a Dispatcher may displace him. Claimant has superior rights to the work. Second, the parties in Award 11604 are the same as the ones in this dispute — even the same Claimant — and it involves the same Agreement which includes Rule 29. Although Carrier did not see fit to urge the application of that Rule in the former case, it is reasonable to assume that since the entire Agreement is in the record, that Rule 29 may have been considered. In any event, we cannot agree with the implication in Award 9217 that the claim may have been denied because Claimant "lost no regular pay by the assignment of the holiday work to the Train Dispatcher." That criteria is not germane to the issue. Further, Rule 29 does not permit Carrier to substitute a Train Dispatcher for a regularly assigned Telegrapher whenever and

however it may desire. As long as a Telegrapher is assigned to a regular position he has first call to work that position and his rights are superior to a Dispatcher and to any other employe. Holiday work belongs to the regular employe who is assigned to that position. See Awards 7134 and 7136.

Carrier contends that in the event of a sustaining Award, Claimant is entitled to payment at the pro-rata rate and not at time and one-half. We do not agree. Claimant is entitled to the amount he would have received had he worked the two holidays. See Awards 11604, 11333 and others.

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 Carrier violated the Agreement.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1964.