

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

HUDSON & MANHATTAN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Hudson and Manhattan Railroad that:

(1) Carrier violated the agreement between the parties when it failed to fill positions on the Christopher Street telephone switchboard (PBX) with employees entitled to the work on September 27, 1957, October 15, 1957, October 22, 1957 and November 8, 1957.

(2) Carrier shall compensate E. Kuhnle for 3 hours and 30 minutes at the time and one-half rate on September 27, 1957; H. Johnson for 3 hours and 30 minutes at the time and one-half rate on October 15, 1957; H. Hines for 4 hours and 30 minutes at the time and one-half rate on October 22, 1957; E. Kuhnle for 3 hours and 30 minutes at the time and one-half rate on November 9, 1957.

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

In connection with its operations, this Carrier maintains a telephone exchange (PBX) in its building located on Christopher Street, New York City. This PBX is manned twenty-four hours per day, seven days per week. This requires three basic seven day positions changing shifts at 6:30 A. M., 2:30 P. M., and 10:30 P. M. with another position, during the peak hours, from 10:00 A. M. to 6:00 P. M. on week days. In addition there is a regular rest day relief position.

During the period covered by the claims in the instant dispute, employees were regularly assigned as follows:

- Shift #1. 10:30 P. M. to 6:30 A. M.—J. Kelley
- Shift #2. 6:30 A. M. to 2:30 P. M.—M. Dolan (Kuhnle temporarily assigned)
- Shift #3. 2:30 P. M. to 10:30 P. M.—E. Hines
- Shift #4. 10:00 A. M. to 6:00 P. M.—M. Brennan
- Shift #5. Rest day relief—H. Johnson.

M. Dolan, regularly assigned to Shift #2, was absent due to a leg injury

Traffic has declined greatly and the volume of work in all departments is much less than in former years. Many positions have been abolished or reduced.

ORT is making claim for overtime for certain telephone operators who were not used when the volume required only one operator to be on duty.

POSITION OF CARRIER: It is the position of the Carrier that it is a prerogative of management to assign work and to determine the number of personnel needed at any given time.

This basic right has not been taken away by any agreement. In fact, Section 4 of Article II of the applicable agreement, which reads in part as follows, recognizes management's right:

"The Management shall determine the number of positions or tours of duty required and shall designate the starting and ending times of all tours or positions."

For a number of years there has been on duty one telephone operator around the clock with a second operator assigned to daytime tour on four days of the week—Monday, Tuesday, Wednesday and Friday.

If one of the daytime operators reports off it has been the practice for the Superintendent of Way & Structures to decide, on the basis of operating needs, whether to fill all, part or none of the position.

Due to a complete change in supervisory personnel, we do not know when this practice began, but we do know that since the commencement of the bankruptcy proceeding this has been the practice. In any event, this was the practice before 1956 when the ORT took over the representation of the telephone operators and took over the same agreements as those which had previously covered them.

That two operators are not needed in the daytime is evidenced by the facts that (a) there has been only one operator at least two-thirds of each day, (b) there has been only one operator at any time on weekends, and (c) there has been only one operator at any time on Thursdays.

There can be no doubt that the volume of work has fallen off greatly. Total traffic was over 113,000,000 in 1927. Ten years ago it was still over 60,000,000. In 1957 it was 29,568,956 and in 1958 it was 30,457,569.

Every possible economy must be effected if the Carrier is to continue operations. It has suffered a net loss in each of the last 10 years and a railroad operating loss in 8 of the 10 years, including the last 6.

CONCLUSION: Carrier submits that there is no justification under the contract or otherwise for the imposition of unnecessary overtime on it. This is particularly true in view of its financial condition.

OPINION OF BOARD: This claim arises on behalf of switchboard operators who claim the right to work overtime in order to completely fill shifts temporarily vacated by reason of the regular employee's illness. The Organization contends that the Carrier is obligated under the terms of the contract, and by virtue of past practice, to allow regular employees filling the preceding and succeeding shifts to split the shift vacated when the regular incumbent reports off sick.

The Carrier contends that it has no obligation to fill such temporary vacancy, but has the prerogative of filling or blanking the position, as it deems advisable, when such temporary vacancy occurs. Carrier further denies that there is a past practice whereby the temporary vacancy is always filled as alleged by the Organization. It asserts that the normal practice is for Management to look to the need and then fill, completely or partially, or blank the position as the circumstances dictate or permit.

The Organization cites no specific provision where the Carrier is obligated to completely fill the shift temporarily vacated by illness of the regular employees. Further, it offers no evidence to show that the past practice has always been the filling of such vacancies as asserted.

On the other hand, Carrier has cited awards, including Awards 934 and 1412, which interpret provisions similar to the provisions in this Agreement which hold that the Carrier is not obligated to fill such temporary vacancies. In Award 1412 (Stone) this Division stated:

"The question presented is this. If an employe * * * lays off * * * is the carrier obligated by the Agreement to give the position and its pay * * * to another employe?"

"On reason and authority the answer is an emphatic 'No.' * * * The question is settled by Award 934, and the well-reasoned opinion therein of the Honorable Frank M. Swacker, Referee. * * *

"The basis of the claim is Rule 43. (The Guarantee Rule). * * *

"That guarantee runs personally to the incumbent of a position rather than impersonally to the job itself. That quite aside, there is nothing in the Agreement which makes mandatory the filling of a position when its regular occupant absents himself * * * "

For these reasons, we hold that Carrier was not obligated to fill the vacated shifts involved, but could blank or partially blank same without violating the Agreement.

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 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 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 30th day of June, 1964.