Award No. 12725
Docket No. TE-10081

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

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

1. Carrier required or permitted Mr. T. J. Landrum, occupant of Rest Day Relief Position No. 6, Birmingham Division, to relieve Mr. H. Jenkins, regular assigned employe of the third shift position of Clerk-Telegrapher, Norris Yard Office, Birmingham, Alabama, August 7 and 14, 1956, the rest days of Jenkins when Landrum had already performed forty (40) hours' work during the week as an extra or relief dispatcher.

2. Carrier shall compensate Mr. H. Jenkins for eight hours at the time and one-half rate of pay of his position for August 7 and 14, 1956 when the violation occurred.

EMPLOYES' STATEMENT OF FACTS: Mr. H. Jenkins is regularly assigned to the third shift position of Clerk-Telegrapher at Norris Yard, Birmingham, Alabama. His assigned hours are 11:00 P. M. to 7:00 A. M. His work week begins on Wednesday and he has Monday and Tuesday as assigned rest days. The established negotiated rate of pay of his position is $2.08 per hour.

Mr. T. J. Landrum is regularly assigned to Rest Day Relief Position No. 6, at Norris Yard. On Monday and Tuesday, as part of his relief assignment No. 6, he relieves the third shift Clerk-Telegrapher position owned by Mr. H. Jenkins. Mr. Landrum is also an extra or relief dispatcher and is carried on the Birmingham Division dispatchers' seniority roster which lists his seniority date as of January 1, 1956, as May 28, 1949.

On July 20, 1956, Mr. Landrum was instructed by Chief Dispatcher Gillespie to relieve dispatchers for their vacations during the period which included August 7 and 14, 1956. During his work week which began on August 2, 1956, Mr. Landrum was relieving Train Dispatcher Brannon's position which had assigned rest days of Tuesday and Wednesday. After having worked the five work days of the Brannon position, Mr. Landrum was required or permitted to work relief position No. 6 under the Telegraphers' Agreement in

required to work on their assigned rest days. It is thus clear that no provision of that rule afforded Mr. Jenkins a contract right to work on August 7 and 14, 1956, and fill the assignment occupied by Telegrapher Landrum. No other provision of the contract in evidence accorded him any such right. He had no such right. Therefore, the claim which the ORT here attempts to assert is not only an absurdity, but indeed is silly. It seeks to deprive one regularly assigned Telegrapher of compensation and increase the compensation of another regularly assigned Telegrapher at the expense of the Carrier. Telegrapher Landrum worked on August 7 and 14 at straight time rate, which was the proper rate under the Agreement. If Claimant Jenkins had been utilized, the time and one-half rate would have been paid. Telegrapher Landrum's earnings would have been reduced $33.28, whereas Telegrapher Jenkins' earnings would have been increased $49.92.

Claim being without any basis whatever, the Board cannot do other than make a denial award.

OPINION OF BOARD: The Claim in this docket stems from the fact that an employe who held a regular assignment as telegrapher, and who was used as an extra train dispatcher, was permitted to return to work on four work days, including the two specified in the claim, of his regular telegrapher assignment. These were rest days, or "days off", of his temporary assignment as train dispatcher.

The Employes contend that this employe had no right to return to work on any day of his telegrapher assignment until his period of service as a train dispatcher was completed. No rule is cited as specifically prohibiting such an employe from working his regular assignment under these circumstances, and the Employes do not explain why such an inference must be found in Rule 4 (The 40-Hour Week), cited as supporting their position.

This Board has held, in Award 3674 for example, that when a regular assigned telegrapher:

> ". . . was working as a dispatcher he was working under the Dispatchers' Agreement, not the Telegraphers' as supplemented by the Rest Day Agreement. It was just as if he had used his day off to work in a grocery store. . . ."

Under such holding, service as a train dispatcher is not subject to any rule of the Telegraphers' Agreement, including Rule 4. It necessarily follows that service as a train dispatcher does not nullify application of any rule of the Telegraphers' Agreement, including Rule 6. Rule 6 guarantees a regular assigned telegrapher eight hours' pay within each twenty-four hour period. The stated exceptions do not include periods of service as a train dispatcher; therefore, the rule applies in such cases. And certainly it contemplates the rendering of service if such can lawfully and reasonably be required.

There was no reason, contractual or otherwise, why the telegrapher could not lawfully be used on the days in question so as to earn the payment required by Rule 6.

It follows that the Carrier did not violate the Agreement, and the claim, therefore, must be denied.

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 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 14th day of July 1964.