

Award No. 12896

Docket No. TE-11775

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSLVANIA — READING SEASHORE LINES

STATEMENT OF CLAIM: Claim of the General Committee of the O.R.T. on the Penna-Reading Seashore Lines that J. J. Flynn, regular assigned Agent at Gloucester, N. J., rest days Saturday and Sunday, is entitled to eight (8) hours' at punitive rate of pay on account of an employe not covered by the Telegraphers' Agreement being required to perform the duties of the Agent at Gloucester Freight Station on Saturdays August 10, 17, 24 and 31, 1957 in violation of the Scope Rule and Article 17 of the Agreement.

In accordance with Article 22 of the Agreement, claim is made for all subsequent Saturdays on behalf of J. J. Flynn that an employe not covered by the Telegraphers' Agreement performs the duties of the Agent at Gloucester.

EMPLOYES' STATEMENT OF FACTS: This claim concerns the Carrier's use of an employe not subject to the Telegraphers' Agreement to perform the work of the Agent at Gloucester, N. J., on the Agent's Saturday rest day. The Carrier's station at this point is a six-day operation. The Agent is the proprietary employe in charge of the operation and work at the agency. For instance, Carrier's rules as to Station Agents provide in part that:

"Station Agents report to and receive their instructions from such officer as may be designated. They will comply with instructions from officers of other departments on matters pertaining to those departments.

They have charge of the Company's books and papers and of the buildings, tracks (except main, secondary tracks, and sidings) and grounds at their stations and, unless otherwise provided, of persons employed at them. They are responsible for the preservation of order in and about their station; the prompt handling, safety and care of passengers, baggage, mail, express and freight; the prompt loading, unloading and forwarding of cars; sale of tickets

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, assuming that it has jurisdiction over this dispute, which Carrier submits it has not until notice is given to other employees involved, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3 (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that your Honorable Board is without jurisdiction to consider this claim unless all interested parties are advised of the pendency of this claim including the Clerical Organization; that the applicable Agreement was not violated when the work involved was performed by an employe covered by the Clerks' Agreement and that the Claimant is not entitled to the compensation claimed.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied, if not dismissed for lack of jurisdiction.

(Exhibits not Reproduced.)

OPINION OF BOARD: The Claimant, J. J. Flynn, was regularly assigned as Agent, Gloucester, N. J., Monday through Friday. There was one regularly assigned Clerk at this station. With the establishment of the 40 hour week September 1, 1949, the Clerk was assigned Tuesday through Saturday being used on Monday, one of his rest days. This arrangement continued until August 10, 1957, when the assigned tour of duty was changed Monday through Friday and the position was filled by a regularly assigned Relief Clerk on Saturdays.

It is the contention of the Claimant that under the Telegraphers' Agreement and the 40-Hour Week Agreement he, as Agent, was entitled to perform Agent's work required on his rest day, Saturday, when the Carrier decided that only one man, rather than two men required on other days, was necessary; that at a station he is in charge of the entire operation, supervising any others that may be employed there, that the primary responsibility is the Agent's alone and it cannot be assigned to a member of another craft.

To the contrary, the Carrier contends that the Scope Rule of the Telegrapher's Agreement with which we are here concerned is the "general" variety not purporting to describe or define work; it is Carrier's further contention the Relief Clerk was assigned duties on Saturday only consistently and regularly performed by the regular Clerk Monday through Friday, that no duties were performed by the Relief Clerk which had been exclusively

reserved to the Agent to perform, that many of the duties of the Agent and Clerk at Gloucester Station overlapped. Carrier further contends that Claimant has the burden of proving that the work the Relief Clerk performed on Saturday was exclusively Agent's work before his claim can be sustained. Lastly, Carrier maintains that the Station was kept open on Saturday for the purpose of accommodating several industries which operated on a six day basis and that the employe performed only clerical duties in connection therewith.

Claimant has urged that Carrier in keeping the station open on Saturday puts the station on the same status as a "one man" station and that in past awards relating to a "one man" station it has been held that all the work under the circumstances belongs to the Agent. There is nothing in the Agreement of January 1, 1945, nor in the 40-Hour Week Agreement, which provides that, where there is more than one employe at a station, the Agent must be on duty every minute of the time that a station is open for business. See Awards 8136 — Elkouri and 9107 — Hornbeck.

We have no quarrel with the rule that, when Carrier requires the work of an Agent to be performed on the rest day of the employe, the work must be assigned to (1) a regular relief employe under the Telegraphers' Agreement; (2) an available extra Telegrapher; or (3) the regular incumbent when the work is assigned to an employe outside of the Agreement.

However, before Claimant can benefit by this rule he has the burden of establishing that the work assigned to an employe outside of the Telegraphers' Agreement must have been work belonging exclusively to the Agent. This he has failed to do. It is repeatedly contended by Carrier throughout the record that the work being done by the Relief Clerk on Saturday was done by the regular Clerk Monday through Friday, that there was no change in the work done by the Relief Clerk on Saturday after August 10, 1957. This has not been effectively disproven by the Claimant.

It appears further that there was no complaint as to the type of work being done by the Clerk on Saturday from September 1, 1949, until after August 10, 1957. Though the delay in presenting the claim would not have created an estoppel had Claimant been able to substantiate his claim that there had been a violation of the Agreement still it must be considered that the failure to present a claim must have some evidentiary value in determining whether or not Claimant regarded during that time he had an exclusive right under the Agreement to perform this work on Saturday.

Under all these circumstances we must conclude that there has been no violation of 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 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

The Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September 1964.