

**Award No. 13090**  
**Docket No. TE-12006**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Robert J. Ables, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE AKRON, CANTON & YOUNGSTOWN  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Akron, Canton & Youngstown Railroad that:

**CLAIM NO. 1**

1. The Carrier violates the agreement between the parties hereto when it fails and refuses to pay the regular occupant of Relief Assignment No. 5 at the agent's rate of pay at Delphos, Ohio for service performed on that position on Sundays.

2. The Carrier shall, commencing sixty (60) days prior to the date of the claim, or December 7, 1958, and for each and every Sunday thereafter so long as the violation continues, pay the regular occupant of Relief Position No. 5 the difference between the clerk-operator's rate paid and the agent's rate of pay to which entitled under applicable rules.

**CLAIM NO. 2**

1. The Carrier violates the agreement between the parties hereto when it fails and refuses to pay the regular occupant of Relief Position No. 4 the agent's rate of pay at Carey, Ohio for service performed on that position on Sundays.

2. The Carrier shall, commencing Sunday, April 22, 1959, and for each and every Sunday thereafter so long as the violation set forth above continues, pay the regular occupant of Relief Position No. 4 the difference between the clerk-operator's rate paid and the agent's rate of pay to which entitled under applicable rules.

**EMPLOYEES' STATEMENT OF FACTS:** There is in evidence an agreement by and between the parties to this dispute, effective May 1, 1955, and as amended.

3. Carrier respectfully submits that the Organization has not shown any violation of any rule, and for the reasons hereinbefore stated, the claims as presented in this docket should be denied.

**OPINION OF BOARD:** Two separate claims on related issues are involved here.

**CLAIM NO. 1**

In the first claim, the employees allege that the Carrier violated the Agreement when it refused to pay the regular occupant of Relief Assignment No. 5 at the agent's rate of pay at Delphos, Ohio for service on Sunday.

At the time in dispute there was an agency and a clerk-operator position at Delphos. The agent worked from 7:00 A. M. to 4:00 P. M. Monday through Friday, rest days Saturday and Sunday. The Saturday rest day was protected by the occupant of relief assignment No. 5 for which he was paid at the agent's rate of pay. This same relief man also worked within the assigned hours of the agent on Sunday, but in a bulletined operator clerk's position, for which he received the operator-Clerk's rate of pay. He also covered the rest days of the clerk-operator.

The question of the appropriate rate of pay for the Sunday position, which is in issue here, arose after the ACY Railroad cancelled an arrangement wherein the Nickel Plate Railroad handled the ACY's business at Delphos on Sunday and the ACY was required to man the station with its own employe. The Carrier states that the Nickel Plate "handled operator's duties at Delphos."

The issue in this dispute is whether, in fact, the relief man relieved the agent on his rest day on Sunday as he did on Saturday for which he should be paid at the agent's rate, or whether a new relief position was established at Delphos on Sunday in substitution for the work done by the Nickel Plate which was, in fact, an operator clerk's position and for which he should be paid at that rate.

The employees' position is that an agent's position was established because:

(a) The position relieved was within the assigned hours of the agent's position on both Saturday and Sunday, for which he was paid at the agent's rate on Saturday and the operator clerk's rate on Sunday even though no operator clerk's position exists between those hours;

(b) The work content on Sunday "is essentially the same" as for the agent's position during his work days, therefore the agent's position at Delphos became a seven-day position;

(c) Rule 4 does not provide for a one-day position and;

(d) Where position and job classification have been properly identified by the work content of the position, a rest day relief employe in accordance with Rule 4, Section 1, (e) paragraph three is entitled to be paid "the rates applicable to the position on which relief service is performed."

The Carrier's position is that no agent's position was established because:

(a) The Delphos agency was never a seven day position since the Nickel Plate handled "operator's" duties there on a three trick seven day a week basis;

(b) Rule 4, Section 1 of the Agreement does not require establishing a position the necessity for which does not exist, and Section 1 (e) of that rule, which is relied on by the employees, permits special assignments for "such types of other work on other days as may be assigned under this Agreement," therefore, "no position is relieved on Sundays;"

(c) In any event, the work done on Sunday is not agent's work.

On balance, we agree with the employees' position for the reasons given. Someone was relieved on Sunday and we believe it was the agent since the agent was on rest days, Saturday and Sunday, and the relief man who relieved him on Saturday (and for which he was paid at the agent's rate) was the same man who performed essentially the same duties on Sunday, during the same hours, as he performed them on Saturday.

In this latter respect, we note the factual dispute between the parties as to the similarity of work content on Sunday and the rest of the week. We are satisfied, however, that the work content was sufficiently similar as to support the employee's position that the relief man is entitled to be paid the rates applicable to the position on which relief service is performed. See Award 12634, Seff; Award 12088, Stack; and Award 11981, Rhinehart for the view that it is not necessary for an employee to take over and perform all of the duties and responsibilities of a higher rated position to be entitled to pay at the higher rate. See also Award 5722 for the view that regular relief positions shall be paid the rates applicable to the position on which relief service is performed.

The first claim should, therefore, be sustained.

## CLAIM NO. 2

For the same reasons, we think the second claim should be sustained. The factual circumstances in the two cases are the same except that in this case the first shift clerk-operator's position was abolished by the Carrier, but not including the Sunday relief assignment.

Carrier's argument that it has the right to stagger assignments under the 40 Hour Week Agreement and that it must have flexibility in implementing that Agreement to reduce the cost of introducing the shorter work week is both correct in fact and appealing in logic. Where, as here, however, the Carrier abolishes a job simply by exercising its managerial discretion, the emotional argument loses some of its force, particularly where it retains only one assignment to give it coverage where it would not otherwise exist. The factual argument about staggering assignments remains correct; however, it does not apply in this situation. It is the agent's job that is being relieved on Sunday and pay should be at the agent's rate.

**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 23rd day of November 1964.