

Award No. 13138
Docket No. TE-11964

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO AND NORTH WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, St. Paul, Minneapolis and Omaha Railway Company that:

1. Carrier violated the agreement between the parties when it required employes to travel to, and perform work at a station other than that to which assigned, in addition to the work of their regular assignments as follows:

(a) H. E. Anderson, Agent, Garden City, Minnesota, at Amboy, Minnesota, on 23 work days, June 5 through July 7, 1959.

(b) M. Horst, Agent, Wilder Minnesota, at Heron Lake, Minnesota, on 15 work days, June 15 through July 3, 1959.

(c) W. C. Lenz, Agent, Jeffers, Minnesota, at Delft, Minnesota, on 8 work days, June 15 through June 24, 1959.

(d) T. S. Doten, Agent, Truman, Minnesota, at Lewisville, Minnesota, on 9 work days, June 16, 17, 23, 24, 25, 26, 30, July 1 and 2, 1959.

2. Carrier shall be required to compensate each of the above named claimants in the amount of a day's pay (8) hours in addition to pay already received on each day required to fill a position and work at a station other than his regular assignment as follows:

(a) H. E. Anderson, 23 days.

(b) M. Horst, 15 days.

(c) W. C. Lenz, 8 days.

(d) T. S. Doten, 9 days.

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

Lake, attention of the Board is respectfully directed to the fact that out of the 15 days for which he claims he should be additionally compensated for eight hours that on June 16, 17, 18, 23, 26, 29, 30 and July 3, 1959 he transacted no business whatsoever for the railway company. In other words, insofar as Claimant Horst is concerned on eight of the days involved in the claim for which he has already been compensated a day's pay and for which he now contends he should be allowed an additional day's pay, he transacted no agency business whatsoever.

While the carrier will admit that theoretically an employe having a full day's work of his own may conceivably be considered as being imposed upon when he is required to perform the work of another employe in addition to performing his own work if the performance of such work creates a hardship on him in performing his own work, or makes it difficult for him to complete his own work within his assigned hours, the question directly presented in this case is whether or not an employe assigned to a position on which he has little or no work to perform, and certainly does not have sufficient duties to consume his full eight hour assignment, who is required because of a complete lack of employes to fill another position to theoretically at least, assume the duties of another employe on which position there is little or no work to perform, when in all cases the duties of both positions amount to two and one-half hours or less per day and where in many instances there were no duties to perform on either position during the entire assigned hours of each or both positions the employes so assigned are "imposed upon" and entitled to additional compensation therefor. The carrier submits specifically that in a case such as this where, for example, Claimant W. C. Lenz asked additional compensation of a day's pay for eight hours for each date June 15, 1959 to June 24, 1959 account required "to travel to and protect the agency position at Delft, Minnesota" despite the fact that it is definitely established that during the entire period of time involved claimant transacted no business whatsoever for the carrier at Delft and performed no service whatsoever for the carrier at that point is completely unrealistic, arbitrary and would constitute unreasonable dissipation of the assets of this carrier by order of this Board without rhyme or reason or support under schedule rules.

The carrier submits that its offer to dispose of the claims before this Board on the basis of Rule 32 is in accordance with the requirements of the provisions of the controlling agreement. The carrier further submits that the claim here before this Board is not supported by any provisions of the controlling agreement and for that reason must be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves the claim of four telegraphers, each of whom was employed as an agent at a one-man station. In addition to performing the duties as agent at their respective stations, they were required to protect the agency service at another station close by. Mr. H. E. Anderson, Agent at Garden City, Minnesota was instructed to handle the work at Amboy, Minnesota where a vacancy on the position of agent occurred due to the retirement of the incumbent. Mr. M. Horst, the regular assigned Agent at Wilder, Minnesota, was required to take over the work of the agent at Heron Lake, Minnesota during that employee's three week scheduled vacation.

Mr. W. C. Lenz, the regular agent at Jeffers, Minnesota, at the request of Carrier, relieved the agent at Delft, Minnesota who was on vacation. Due

to the death of the agent at Lewisville, Minnesota, Agent T. S. Doten of Truman, Minnesota was assigned to protect the agency service.

The Order of Railroad Telegraphers claim compensation on the basis of a day's pay for each day the specified telegraphers performed work at these stations in addition to the pay already received on their regular assignment.

Although both parties in their ex parte submissions and rebuttals have raised various issues and have referred to a number of rules, they have finally confined the issue to the question of payment for the additional services rendered. The basic position of the Brotherhood rest upon Rule 48. Carrier, on the other hand, argues that if any rule is applicable, Rule 32 should be the basis for rate of payment.

Rule 48 which concerns the definition of a "basic day" states that "8 consecutive hours . . . shall constitute a day's work." This Rule does not define rate of pay or compensation, and it conveys no direction for rate of pay. Since the gist of the action is particularly directed to compensation or rate of pay, Rule 48 is not applicable to the circumstances under consideration.

Rule 32 relates to emergency relief service of regular telegraphers and only emergency relief service. The record establishes that there was no emergency except in a single instance involving the death of an agent. This emergency lasted but one day. Since a vacation is planned and the need for replacement help is foreseeable and not sudden, we find the assignments of the four telegraphers were not of an emergency character. Our holding is in accord with Awards 10839 and 10919.

Nevertheless, Carrier has acknowledged the right of the Telegraphers to compensation for the extra services performed by them. On Page 18, the record states:

"It is the position of the Carrier that in the circumstances involved in this case, Claimants were entitled to be compensated as provided in Rule 32. The Carrier is willing to dispose of the case on that basis and has offered and is still willing to dispose of the case on that basis since the rules clearly provide for compensating Claimants on that basis." (Emphasis ours.)

Later in the submission on Page 22 of the record, Carrier attempts to qualify its previous offer by stating:

"The Carrier submits that its offer to dispose of the claims before this Board on the basis of Rule 32 is in accordance with the requirements of the provision of the controlling Agreement. The Carrier further submits that the claim here before the Board is not supported by any provisions of the controlling Agreement and for that reason must be denied in its entirety."

Further, Carrier on Page 7 of its rebuttal asserts that the Brotherhood in a letter to the Director of Personnel, dated March 16, 1960 Carrier's Exhibit C, suggested settling on the basis of Rule 32, and that Carrier in reply offered to do so, Exhibit D, but it alleges that such an offer did not constitute an admission of liability. The Brotherhood's letter, Exhibit C, does not support Carrier's position in that the letter cites Rule 32 for the purpose of showing that it was applicable only to emergencies and that vacation replacements are not an emergency. We find that the record shows that Carrier has taken the position that it is responsible for payment.

The only remaining issue advanced by the parties is which of the two Rules, i.e., Rule 48 or Rule 32 shall be the basis of payment for the extra services rendered by the telegraphers. We hold that Rule 32 shall be employed in establishing the compensation due these telegraphers.

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

The Agreement of the parties was violated.

AWARD

Claim sustained in accordance with the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1964.

DISSENT TO AWARD 13138, DOCKET TE-11964

Of a character in one of his stories, Stephen Leacock said:

"He flung himself from the room, flung himself upon his horse and rode madly off in all directions."

That amazing performance was no more fantastic than the flight of fancy which led the majority to its decision "that Rule 32 shall be employed in establishing the compensation due these telegraphers."

The majority, which consisted of the Referee and Carrier Members, correctly found that "Rule 32 relates to emergency relief service of regular telegraphers and only emergency relief service." It also correctly found that except for one day there was no emergency in the case, and that the disputed assignments of claimants "were not of an emergency character."

Rule 32 plainly provides for payment only when it is applicable and complied with. The rule was violated, as the majority found, when the claimants were diverted contrary to its terms. How then, and by what reasoning could its pay provisions apply? Obviously, they could not properly be applied to decide the sole issue presented by the dispute.

The only issue was how the claimants should have been paid. The Employees relied on Rule 48, the basic day rule, providing for each position a day's work of eight hours. After some vacillation, the Carrier contended that Rule 32 applied. Thus, the basic question for decision was which rule should be applied in making payment to the claimants.

The majority says that neither rule applies but, realizing that the dispute was of such a nature that other rules could not properly be applied, decides that Rule 32—even though it is not applicable—should be “employed” to determine the payments due.

This, surely, is much the same as trying to go in at least two directions at the same time.

Originally, the proposed award stated unequivocally “Claim sustained”. This clearly was taking an entirely different direction than was indicated in the “Opinion of Board”. Finally, the majority changed the award to read “Claim sustained in accordance with the Opinion”.

So what does the “Opinion” say? I contended, and still maintain, that it is contradictory. I contended that since, however, the Opinion flatly states that Rule 32 “shall be employed in establishing the compensation due these telegraphers” its provisions must be followed explicitly and without doing violence to other rules. This means, I clearly pointed out, that the pay provisions of Rule 32 must be applied without regard to payments that have been made under other rules for the work to which the employees were properly assigned.

Not a word of the “Opinion” was changed. Only the Award was changed to make it conform to the Opinion.

Such decisions, which do not clearly meet the issue presented, but “ride madly off in all directions” do not, in my opinion, fulfill the obligation imposed upon this Board to settle the disputes submitted to it.

Therefore, and to the extent indicated, I dissent.

J. W. Whitehouse
Labor Member