

Award No. 14071
Docket No. TE-13428

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE PENNSYLVANIA RAILROAD COMPANY

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

The Carrier violated and continues to violate the existing agreement between the parties, when on May 6, 7, 14, 21, 1960, the Carrier arbitrarily delegated the work formerly performed by the claimant, R. McDonald, incumbent agent, Spencer, Indiana, rest days, Saturday and Sunday, to employees at another location, Switz City, Indiana, thereby estopping the claimant from the proper performance of his prescribed duties which have formerly accrued to him.

Therefore, the claimant is entitled to be paid one (1) two (2) hour call at the established hourly time and one-half rate for not being called to perform the required service, on May 6, 7, 14 and 21, 1960, at Spencer, Indiana. Violation, Scope of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: The foregoing claim was timely filed by the District Chairman of the Organization with the Superintendent-Personnel, on June 25, 1960, and denied by him on July 1960. An appeal from the Superintendent's decision was made by the General Chairman August 18, 1960, to Manager, Labor Relations, whereupon, in accordance with procedural handling on the property, the Superintendent-Personnel, and the District Chairman prepared the following Joint Submission for the appeal conference:

"PENNSYLVANIA RAILROAD
Southwestern Region

Southwestern Region
ORT Case No. 25/60

Superintendent-Personnel
and
Local Chairman, ORT

SUBJECT: Claim of the General Committee of the Order of Railroad Telegraphers, Southwestern Region, District No. 1 that:

OPINION OF BOARD: Claimant McDonald was the regularly-assigned Agent at Carrier's freight station at Spencer, Indiana with rest days on Saturday and Sunday. For many years the Spencer Agency provided service to a shipper of limestone at Romona, a "prepay" station about four miles away. During the fifteen years preceding May 1960, when stone shipments were made from Romona on Saturdays or Sundays (or outside the Spencer Agent's assigned hours), Claimant was assigned (at the overtime rate) to perform the work of billing, weighing, and other related duties. He also made arrangements for supplying additional cars, if needed, and for moving those ready to go.

May 7, 14 and 21, 1960 were rest days of the Spencer Agency position. May 6 was a regular workday, but the incident in dispute occurred after the Agent had completed his tour of duty. On these four days Carrier rearranged procedures connected with the stone shipments from Romona. A Dunn Limestone Company representative at Romona (at Carrier's request) telephoned the second trick Block Operator at the Switz City freight station (26 miles from Spencer, and also on Carrier's Indianapolis-Vincennes line, Southwestern Region) to request that loaded cars be moved and empty cars delivered for further loading. The Block Operator made out a memo or "slip bill" to cover the car movements and relayed the information to a Yard Clerk at Bicknell Yard (about 23 miles from Switz City). The Yard Clerk prepared the Spencer switching list and the Yardmaster at Bicknell ordered the cars for the Spencer-Romona loading. The Yard Clerk also provided the Conductor with car numbers and initials of the loads to be moved from Romona. The Conductor, in turn, made out a "Slip bill" under which the cars were moved. On the following Monday, Claimant McDonald completed the regular revenue waybills at his Spencer office. The net result of using this procedure, insofar as McDonald was concerned, was to deprive him of the opportunity to work some overtime hours on each of the four days in question.

Claimant Agent McDonald was classified as a Group 1 employee and the Switz City Block Operator as a Group 2 employee under the Telegraphers' Scope Rule. The Yard Clerk at Bicknell was not covered by the Telegraphers' Agreement nor, of course, was the Dunn Limestone Company's representative at Romona.

Petitioner's contentions may be summarized as follows:

1. Carrier violated the Scope Rule and Regulations 1-B-1(h), 1-B-2 and 2-A-1 by requiring the Block Operator, a Group 2 employee, to perform work attached to the Agent, a Group 1 employee. These rules reflect the parties' intent to keep separate both the work and positions of Groups 1 and 2 (Awards 2585, 1808, 1306 and others). The Board has held that it is not proper to assign work of one seniority district to employees in another district within the same craft (Awards 4653, 10577, 10166, 11116, and Award No. 24 of S.B.A. No. 374 involving this Carrier and the Clerks).
2. Carrier violated the Scope Rule by assigning work customarily and traditionally performed by the Agent, an employee covered by the Agreement, to the Bicknell Yard Clerk and the shipper's representatives, persons not covered by the Agreement. The work in question had been performed exclusively by the Spencer Agent, and no one else, for fifteen years.
3. Carrier violated Regulation 5-G-1(i), the unassigned day rule, by assigning work on the three Saturdays (May 7, 14 and 21) to

persons other than the "regular employe," Claimant McDonald (Awards 6689, 13354, 13142, 12137 and others). Moreover, overtime work arising out of a particular position belongs to the occupant of that position (Awards 4531, 5346, 5078).

Carrier contends, on the other hand, that it has the right to determine how work shall be assigned, what work is to be performed, the time of performance, and the number of employees and positions to be used. Here, in the interest of "efficiency and economy," it assigned certain work involved in handling car movements to Block Operators, Clerks and Conductors when Claimant's station was closed on rest days. Moreover, there was a long practice throughout the system of making assignments such as this.

In denying any Agreement violation Carrier argues in substance that:

1. The Scope Rule, general in nature, does not reserve the work in question to Telegraphers. It is incumbent on Petitioner, therefore, to establish that, throughout Carrier's property, the work in question has been performed exclusively by employees covered by the Agreement (Awards 13694, 13580, 13347, 11526, 11331 and others). This it has failed to do.

2. The Board has frequently held that clerical work is not exclusive to employees covered by Telegraphers' Agreement (Awards 13442, 12530, 13243, 11120, 8537 and others). And Claimant did the clerical work of preparing waybills during his regular tour of duty.

3. A one-man station agent does not own all the station work at that point unless the parties have so provided (Awards 12530, 12991, 12147, 11321).

4. The Board has already ruled on the precise issue now in dispute in Award 6409. To a similar effect are Awards 12147, 11321, 11067 and 7031.

5. Carrier is not bound to pay the overtime rate for work if that work can be accomplished at straight time rate (Awards 13365, 13192, 7227, 5331).

It is true that Award 6409 concerned the same parties, the same contractual provisions, and a claim for rest day work. But it cannot be considered controlling here in light of several important distinctions: (1) the shipper's call to a different station was not at Carrier's behest but was of his own doing; (2) ordering of cars for Claimant's station had not been performed exclusively by the Agent even during his Monday-Friday tour of duty; (3) there was no evidence that Saturday or overtime work of the kind in issue occurred regularly. In the case at hand, by contrast, there was an exceptionally long tradition (fifteen years) of assigning the overtime and Saturday work to the Claimant, this was a regular weekly occurrence, and there is no evidence that the work in question had been performed by anyone else at Spencer. Moreover, it was not mere happenstance that the shipper contacted another station; rather, he followed Carrier's explicit instructions.

The Board has issued many divergent decisions in matters of this kind and it would be fruitless to detail them here. Dissents have been frequent. In the case at hand, and after consideration of the evidence and arguments, it

is our finding that the claim for May 7, 14 and 21 should be sustained in light of the particular facts and circumstances. The unassigned day rule supports the conclusion that the long and consistent practice of using Claimant to handle Saturday work involving this Romona shipper should have prevailed. See Award 10646. This is not a situation, it may be noted, where Carrier has improved or expedited its operations or its service to customers. Claimant is entitled to pay at the overtime rate for the six hours in question since that is the rate he would have received had he been called for work.

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

That the Agreement was violated.

AWARD

Claim sustained for two hours' pay at time and one-half for May 7, 14, and 21, 1960.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of January 1966.