



Award No. 14406
Docket No. TE-14049

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Boston and Maine Railroad, that:

1. Carrier violated the Agreement between the parties when it required J. F. Buckley, regularly assigned rest day relief employe, to suspend work on his assignment at Lancaster, New Hampshire on December 25, 1961, a work day of his position at Lancaster, and transferred the work of handling (receiving, copying and delivering) train orders to the general agent (Minor) at Groveton, New Hampshire for that date.

2. Carrier violated the Agreement between the parties when it required J. F. Buckley, regularly assigned rest day relief employe, to suspend work on his assignment at Lancaster, New Hampshire on January 1, 1962, a work day of his position at Lancaster, and transferred the work of handling (receiving, copying and delivering) train orders to an employe not covered by the Agreement at North Stratford, New Hampshire on that date.

3. Because of these violations Carrier shall compensate J. F. Buckley in the amount of a day's pay of eight (8) hours at the time and one-half rate (of the agent-telegrapher position at Lancaster, New Hampshire) for each day December 25, 1961 and January 1, 1962.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective August 1, 1950, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Lancaster, New Hampshire, is located on the Fitchburg Division, Main Line — Norwich to Wells River — Berlin District of the Carrier's lines. Lancaster is a joint office of the Boston and Maine and Maine Central railroads, is a one-man station and the employe is covered by the Agreement between the Boston and Maine Railroad and this Organization. The position at Lancaster (covered by the Agreement between the parties involved in this dispute) is classified as Agent and Telegrapher with hours of assignment of

The Respondent not having jurisdiction of the work in question, and not having "permitted or required" the subject work, the claims that the relief agent at Lancaster should have been called to perform service was denied.

Although the claim is made for eight hours at time and one-half rate on each claim date, a "call" (3 hours at time and one-half rate) is the maximum allowance payable under Article 37(a)2(a).

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant is the regular assigned occupant of a relief position which includes rest day relief work on the position of Agent and Telegrapher at Lancaster, New Hampshire, on Mondays.

Trains of the Maine Central Railroad use the tracks of the Carrier, Boston and Maine Railroad, between Groveton and Coos Junction, adjacent to Lancaster. The Maine Central trains also use the tracks of the Canadian National Railroad to enter the Maine Central tracks. Normally, the necessary train orders are received and copied by the Agent-Telegrapher at Lancaster, Carrier's employe, and there delivered to the crews of the Maine Central trains.

On Monday, December 25, 1961, the Christmas holiday, the Claimant was laid off and the position of Agent and Telegrapher at Lancaster was not filled. The Maine Central, however, operated one train which, as usual, required a train order before leaving the Boston and Maine rails at Coos Junction. Instead of calling the Claimant to handle this train order, the General Agent at Groveton, covered by the Telegraphers' Agreement and in the same seniority district as Lancaster, was required to handle it. The occupant of the position, however, does not handle Maine Central train orders and did not have the proper forms on hand, so he altered Carrier's train order forms.

On Monday, January 1, 1962, the New Year holiday, Claimant, again, was not called, and the Maine Central operated it's train as usual. On this date a telegrapher at North Stratford, an employe of the Canadian National, not covered by the Telegraphers' Agreement with the Carrier, was used to handle the necessary train order which did not become effective until the train reached Coos' Junction.

The original claim, herein, was addressed to the Superintendent of the Maine Central, but by agreement further handling was transferred to Claimant's employer, the Boston and Maine Railroad.

It is Carrier's contention that, though this work involved here was normally performed by Carrier's operators, the Carrier had no exclusive right to handle Maine Central train orders and this was a Maine Central train order—that the point at which the train order was to be delivered was within the prerogative of the Maine Central Railroad; consequently, that no work was performed on either December 25, 1961, or January 1, 1962, within the purview of the effective agreement with the Carrier.

It is apparent that there was an agreement between the Maine Central Railroad and the Carrier to have Maine Central train orders handled by the Agent and Telegrapher at Lancaster, and this was the procedure normally followed. Unfortunately, whatever that arrangement may have been is not before us—we can reasonably conclude that the Carrier was to be reimbursed in some manner for any services performed for Maine Central Railroad

by Carrier's employees. There have been many instances where two or more Rail Carriers have found it desirable to enter into contracts or understandings for the performance by one of them or to share work to be performed. The work to be performed under such circumstances falls to the Carrier and its employees who by reason of such agreement have the duty to perform it. See Award 11002 — Boyd. In the instant case that would have ceased if such arrangement between these Railroads had come to a close but here we find merely a temporary departure from such arrangement on these two days.

On December 25, 1961, the train order was handled by an employee covered by the Agreement and in the same seniority district with Claimant. We can see no prohibition against the use of such an employee to perform the work. Accordingly, the claim for December 25, 1961, must be denied.

On January 1, 1962, the train order was handled by one who was not an employee of the Carrier and who was not covered by the Carrier's Agreement with its employees. Article 21 (a) of the effective agreement excludes such persons from the handling of train orders.

For the foregoing reasons, the Board believes there should be a sustaining award for the violation occurring on January 1, 1962. Claimant contends that under the agreement the maximum provision for eight hours' pay should apply; Carrier, to the contrary, contends, in the event of a sustaining award, the reparation should be limited to a call — three hours at the time and one-half rate. Under all the circumstances, it appearing there was only one train order and clearance to handle the work did not justify a full day's payment — a minimum payment of three hours at time and one-half is adequate.

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 was not violated on December 25, 1961; the Agreement was violated January 1, 1962.

AWARD

Claim denied in part and sustained in part in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1966.

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