

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad that:

1. Carrier violated the agreement between the parties when, effective August 7, 1958, at Roodhouse, Illinois, it changed the rest days of the Agent-Telegrapher position without proper notice and declared abolished the second and third shift telegraphers' positions and the regular rest day relief position.

2. Carrier shall compensate:

(a) J. W. Farrell, Agent-Telegrapher, for eight hours at the time and one-half rate on Friday, August 8, Saturday, August 9 and eight hours at the straight time rate on Sunday, August 10, 1958.

(b) W. R. Lewis, second shift telegrapher, in the amount of a day's pay on August 7, 8, 9, 12, 13 and 14, 1958.

(c) C. W. Kessinger, third shift telegrapher, in the amount of a day's pay on August 7, 8, 9, 10, 11 and 14, 1958.

(d) The senior idle extra employe who would have filled the regular relief position during the absence of the regularly assigned incumbent.

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

Roodhouse, Illinois is a station on the Chicago-Kansas City line of this Carrier about midway between those cities and about 15 miles east of the Illinois River. It is a division point or terminal between the Eastern and Western Divisions. At the time cause for this claim arose there were three

The bridge was repaired and train operations resumed on August 15, 1958 and on that day the Carrier's Superintendent sent the following telegram to the Agent-telegrapher and telegraphers at Roodhouse:

"Effective 3:00 P. M., August 15, 1958, position of 2nd trick telegrapher at Roodhouse, Illinois is re-established with same assigned hours and work week as prior to abolishment.

Effective 3:00 P. M., August 15, 1958, position of 3rd trick telegrapher at Roodhouse, Illinois is re-established with same assigned hours and work week as prior to abolishment.

Effective August 15, 1958, position of Swing Agent Telegrapher-Telegrapher at Roodhouse, Illinois is re-established with same assigned hours and work week as prior to abolishment.

Lewis protect 2nd trick commencing 3:00 P. M., August 15.
Kessinger protect 3rd trick commencing 11:00 P. M., August 15.
Cloninger protect regular swing assignment. Joint."

The agreement between the parties applicable to the abolishment of positions is the so-called "National Agreement" of August 21, 1954. Article VI of that agreement provides:

"Rules, agreements or practices, however established, that require more than sixteen hours' advance notice before abolishing positions or making force reductions are hereby modified so as not to require more than sixteen hours such advance notice under emergency conditions such as flood, snow storm, hurricane, earthquake, fire or strike, provided the Carrier's operations are suspended in whole or in part and provided further that because of such emergency the work which would be performed by the incumbents of the positions to be abolished or the work which would be performed by the employees involved in the force reductions no longer exists or cannot be performed.

This rule shall become effective November 1, 1954, except on such Carriers as may elect to preserve existing rules or practices and so notify the authorized employe representative or representatives on or before October 1, 1954."

There is also an agreement between the parties effective June 1, 1953, a copy of which is on file with this Board and, by reference, made a part hereof.

OPINION OF BOARD: During the night of August 2, 1958, a boat rammed the drawbridge on which Carrier's rails cross the Illinois River at Pearl, Illinois. The bridge was not restored to service until August 15, 1958, at which date rail traffic was resumed. The station at Roodhouse, Illinois is about 15 miles east of the Illinois River. Three positions, that of Agent-Telegrapher and two Telegraphers, provided continuous service around the clock seven days a week. The Agent-Telegrapher's hours were 7:00 A. M. to 3:00 P. M. The second shift Telegrapher worked from 3:00 P. M. to 11:00 P. M. and the third shift Telegrapher from 11:00 P. M. to 7:00 A. M. A regular relief position relieved the first shift on Fridays and Saturdays, the second shift on Sundays and Mondays, and the third shift on Tuesdays. The Wednesday rest day of the third shift was assigned to another relief position.

Following the damage of the bridge on August 5, 1958, J. C. Miller, Division Superintendent at Slater, Missouri, sent telegrams addressed to J. W. Farrell, first trick Agent-Telegrapher; W. R. Lewis and C. W. Kessinger, second trick telegraphers; L. R. Cloninger, regular relief operator who was on vacation; and C. L. Camp, Trainmaster, whose headquarters were at Roodhouse, informing them of the following changes:

"Effective August 7, 1958 the Agent-Telegrapher's hours would be changed to 8:00 A.M. to 5:00 P.M. instead of 7:00 A.M. to 3:00 P.M.; and beginning August 9, the work days would be changed from Monday through Friday except holidays, with Saturday and Sunday as rest days.

On August 7 the second and third shifts would be abolished."

Organization claims that the abolishment and changes were contrary to the Agreement. It alleges non-compliance by Carrier with Rule 17, Section 1(k) which requires in case of a change in rest days that not less than 72 hours' written notice be given to the employee affected. It also contends that affected employees were not properly notified of the abolishment of the second and third shifts and the regular rest day relief position inasmuch as Rule 19, Section I (i) requires that employees affected by a reduction in force be given no less than 36 hours' notice. Organization also takes the position that the positions were not actually discontinued or abolished but were temporarily suspended.

Carrier asserts that during the period August 2 to August 14, no trains could be operated over this portion of the railroad because of the condition of the bridge, hence there was no need for telegrapher operators and the positions were properly abolished. With reference to the improper notice of changing the rest days of the Agent-Telegrapher, Carrier counters that it fully complied with Rule 17 (k) by giving the affected employee approximately 93 hours' notice. Carrier asserts that it complied with Article VI of the November 1, 1954 National Agreement which specifies at least 16 hours of advance notice to employees when positions are abolished or a reduction in force is made under emergency conditions. The extensive damage to the bridge which discontinued all train operations constituted an emergency, and the notification by telegram, sent at 11:00 A.M. on August 5, informing the two telegraphers that their positions would be abolished on August 7, gave them the 16 hours' advance notice required.

In examining the claim that Carrier changed the rest days of the Agent-Telegrapher position without proper notice, we find that he was notified by telegram at 11:00 A.M. on Tuesday, August 5, and that his rest days were changed effective August 9. Thus in accordance with 17 (b) of the position became a five day position with rest days Saturday and Sunday, and he was notified within the 72 hour period required under 17 (k). Since he worked August 8 and August 9, his consecutive work period ending August 9 totaled seven days; hence, Mr. Farrell is entitled to payment at time and a half for the 6th and 7th days less pro rata pay already received. There is no basis for support of his claim for payment for Sunday, August 10, 1958 as requested in paragraph 2 (a) of the Claim.

We are satisfied that the second and third shift positions were abolished in view of the cessation of functions performed by telegraphers during the period August 2 to August 14 when the bridge was out of commission.

With reference to the contention that proper notice was not given in accordance with Rule 19 (i), we find the facts were as follows: Mr. Farrell received the telegram on August 5 at 12:00 noon. Mr. Lewis, the second shift telegrapher, also learned of the telegram when he reported for work at 3:00 P. M. that day. He worked Tuesday and Wednesday, August 5 and 6 and more than 36 hours would have elapsed before he was to report to work at 3:00 P. M. on August 7. Therefore, he was properly notified of the abolishment of his position and his claim under paragraph 2 (b) is denied.

Although Mr. Kessinger was on his rest days when the telegram was sent to him, the fact that he did not return to work in accordance with the old schedule leads us to conclude that he had received the notification 36 hours or more in advance as required. His claim, therefore, under paragraph 2 (c) is denied.

In considering paragraph 2 (d) of the Claim, we find that Mr. L. R. Cloninger, the regular relief operator, was on vacation on August 5. If the idle extra employe worked on that day, he no doubt had received notice because there is no showing that he reported for work on the following rest day. Claim under paragraph 2 (d) is therefore denied.

To summarize, we hold that J. W. Farrell is entitled to compensation at time and a half for August 8 and 9, less compensation already received by him for that period. All other claims are denied.

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 in part.

AWARD

Part of Claim 2 (a) sustained.

Claims (b), (c) and (d) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1966.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.