



Award No. 15617
Docket No. TE-14330

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

ARKANSAS AND MEMPHIS RAILWAY BRIDGE
AND TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Arkansas & Memphis Railway Bridge & Terminal Company, that:

1. Carrier violated the Agreement between the parties when it declared Relief Position No. 1 abolished effective August 6, 1962, and used the incumbent of this position, J. D. Presson, off his regular assignment.

2. Carrier shall compensate J. D. Presson at the time and one-half rate of pay for all hours he has been required to work outside the regularly assigned hours of his Regular Relief Position No. 1.

EMPLOYEES' STATEMENT OF FACTS: The agreement between the parties, effective March 1, 1959, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The Carrier maintains two offices at which there are positions covered by the Agreement between the parties hereto. There are three bridge dispatcher positions at Kentucky Street, Memphis, Tennessee, and there are three telegrapher positions at Briark, Arkansas. The positions at Kentucky Street are six-day positions and are monthly rated. The positions at Briark are seven-day positions, hourly rated. The assignments of the positions are as follows:

Location	Position	Assigned Hours	Rest Days
Kentucky Street	Bridge Dispatcher	7:00 AM- 3:00 PM	Friday
Kentucky Street	Bridge Dispatcher	3:00 PM-11:00 PM	Saturday
Kentucky Street	Bridge Dispatcher	11:00 PM- 7:00 AM	Monday
Briark	Telegrapher	6:30 AM- 2:30 PM	Thur & Fri
Briark	Telegrapher	2:30 PM-10:30 PM	Sat & Sun
Briark	Telegrapher	10:30 PM- 6:30 AM	Mon & Tue

will be guaranteed a total of not less than eight (8) hours for each day away from his regular assignment. Payment for time worked on the relief position will be a pro-rata rate for time worked within the hours of his regular assignment, and at the time and one-half rate for time worked outside the hours of his regular assignment. Such employee will retain the assigned rest day of his regular position. Payment under this rule will be based on the higher rate of the two positions.

If any such employee would have received time and one-half rate on his regular assignment through the application of Rule 11, on any day such service is performed, the time and one-half rate shall apply on that day or days."

8. In denying the claim the Carrier took the position that there was no rule prohibiting the Carrier from abolishing a position so long as the work remaining to be performed is not assigned to employees outside the scope of the Telegraphers' Agreement. In addition Rule 17(h) recognizes the right of the Carrier to move employees up within the office to protect a temporary vacancy, the only penalty provided to protect the employee from loss suffered in making such a move is in paragraph (i) of Rule 17 reading as follows:

"Employees transferred by the Carrier will be paid for any time lost in making such moves. It is understood employees will not be paid for time lost of their own accord."

9. This dispute was progressed to your Board by notice of G. E. Leighty dated May 16, 1963, although the requirements of Section 2 Second of the Railway Labor Act as amended had not been fulfilled. Section 2 Second of the Railway Labor Act as amended reads as follows:

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

No request was received from the General Chairman by President-General Manager N. N. Hopkins for a conference to discuss this dispute.

OPINION OF BOARD: The Petitioner in the instant case has admitted in the record that a conference was not held on the property in an attempt to resolve this dispute. The Carrier consequently contends that this Board is without jurisdiction to make a determination of the merits of the Claim.

The Courts have consistently held that this Board does not have the authority to consider a claim unless the statutory requirements of the Railway Labor Act are satisfied. That Act specifically requires that a conference must be held. It is a jurisdictional requirement. It has not been met, and we will accordingly dismiss the Claim for lack of jurisdiction.

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 no jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1967.