



Award No. 15720
Docket No. TE-14643

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines), that:

1. Carrier violated the terms of an Agreement between the parties hereto when on January 8, 1963, it required H. L. Wooster, regular occupant of the 2nd shift telegrapher-clerk position at Tempe, Arizona, to suspend work during his regular hours.

2. Carrier shall, because of the violation set out in paragraph one hereof, pay W. R. Guymon, Jr., regular occupant of Mesa-Tovrea relief position, who was available on his rest day to perform the work, a day's pay of eight (8) hours at the prevailing rate.

3. Carrier shall, in addition to the foregoing, reestablish the 3rd shift telegrapher-clerk's position at Tempe, Arizona.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties hereto effective December 1, 1943, revised March 1, 1951, and as otherwise amended. Copies of said Agreement as required by law are assumed to be on file with this Board, and are by this reference, made a part hereof.

At page 70 of said Agreement are listed the positions existing at Tempe, Arizona, on the effective date thereof. For ready reference, the listing reads:

"Tempe	Agent-Telegrapher
Tempe	2nd Telegrapher-Clerk
Tempe	3rd Telegrapher-Clerk"

The foregoing listing establishes that for many years Carrier maintained communication positions on an around-the-clock basis at Tempe, Arizona, the occupants of which performed Carrier's train order work at this station location. The date upon which the third shift telegrapher-clerk's position at Tempe was discontinued is not a part of the record.

Thus, on only one occasion—the date of this claim—was the incumbent of 2nd Telegrapher-Clerk position at Tempe released in advance of completion of his regular tour of duty (30 minutes) and given call to report later since that position was established. Further, on only eight occasions since the time the position was established was the incumbent thereof required to work overtime or given a call. On but two of those nine occasions was any work whatever performed by the occupant of the 2nd Telegrapher-Clerk position within the hours of the former 3rd Telegrapher-Clerk assignment—12:00 Midnight to 8:00 A.M.—once on the date of this claim, totalling 20 minutes, and again on January 24, 1963, totalling 10 minutes.

By letter dated January 17, 1963 (Carrier's Exhibit B), Petitioner's District Chairman submitted claim to Carrier's Division Superintendent on behalf of ". . . W. R. Guymon, Jr., regular occupant of Mesa-Tovrea relief position, who was available on his rest day to perform the work, a day's pay of eight (8) hours at the prevailing rate for January 8, 1963 . . .", and also requested, in that letter, restoration of the 3rd Trick Telegrapher-Clerk position at Tempe; by letter dated March 7, 1963 (Carrier's Exhibit C), the Division Superintendent denied the claim.

By letter dated April 4, 1963 (Carrier's Exhibit D), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel and by letter dated June 19, 1963 (Carrier's Exhibit E), the latter denied the claim, stating that 2nd Telegrapher-Clerk H. L. Wooster performed all duties required of his position, for which he was compensated under Rules 5(a) and 16(a) of the current agreement, and that there was no need for calling the claimant nor was there any need for restoration of the position of 3rd Telegrapher-Clerk.

(Exhibits not reproduced.)

OPINION OF BOARD: There are two matters which are referred to in the record and the submitted briefs which may be disposed of with brevity:

- (1) It appears to our satisfaction and it is our belief that this Board has no jurisdiction to enforce the Hours of Service Law; and
- (2) Part 3 of the Claim cannot possibly be approved, for the evidence of record is insufficient to justify consideration of reestablishing the 3rd shift position.

In the case at hand, Carrier was not in compliance with Rule 15 of the Agreement, which reads in pertinent part as follows:

"Employee shall not be required to suspend work during regular hours. . . ."

Here, Mr. Wooster, the regular occupant of the 2nd shift position, had assigned hours from 2:00 P.M. to 10:00 P.M., which consecutive eight hours constituted his basic work day. On the day in question, January 8, 1963, Mr. Wooster was directed to suspend work at 9:30 P.M. and to report back on "call" for duty at 11:00 P.M. Mr. Wooster returned to duty at 11:00 P.M. and worked until 12:20 A.M., January 9, 1963. Carrier properly paid him the full amount due him for the eight hours of the basic work day, and, in addition thereto, he was paid for two hours at the overtime rate of pay

(this for the work done from 11:00 P. M. to 12:20 A. M., as aforesaid) — the overtime rate of pay for two hours being in compliance with Rule 16 (a) of the Agreement.

We come now to the question of what action we should take in regard to Carrier's technical violation of Rule 15. In determining the significance of a violation such as this, the neutral referee believes the following questions should be thoughtfully considered:

- (1) Did any individual employe sustain loss or damage? and
- (2) Did the Organization, of which the employe is a member, suffer damages? and
- (3) Were the provisions of the Agreement nullified or diluted to the disadvantage of the employes?

In the present case, it appears that each of the above questions would have to be answered in the negative.

On the other hand, it is not difficult to perceive that in many instances the violation of Rule 15 would result in both immediate and longlasting damages. Therefore, the decision in this particular case should never be used as a precedent to justify either disregard or evasion of the clear meaning of contractual provisions.

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 Carrier violated Rule 15 of the Agreement of the parties; and

That in this particular case no damages resulted from Carrier's technical breach of contract; and

That Part 1 of the Claim should be sustained and Parts 2 and 3 denied.

AWARD

Part 1 of the Claim is sustained.

Parts 2 and 3 of the Claim are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.