

Award No. 17010
Docket No. TE-16350

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Soo Line Railroad, that:

1. Carrier violated the Agreement between the parties when it required and permitted the supervisory agent at Appleton, Wisconsin, to perform work at that station which is ordinarily performed by the telegrapher-clerk.

2. (a) Carrier shall compensate Telegrapher B. J. Schraufnagel for eight (8) hours' pay at the pro rata rate of the operator-clerk position at Appleton, Wisconsin, on December 22 and 29, 1964, January 5, 12, 19, 26, February 2, 9 and 16, 1965, as a result of the above violation.

(b) Carrier shall compensate Telegrapher R. M. Schuette for a minimum call at the operator-clerk position rate of pay at Appleton, Wisconsin on December 26, 1964, January 2, 9, 16, 23, 30, February 6 and 13, 1965, as a result of the above violation.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective July 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Mr. A. C. Kunst is regularly assigned to the operator-clerk position at Appleton, Wisconsin, assigned hours 8:00 A. M. to 5:00 P. M., Monday through Friday, with an assigned call on Saturday starting at 10:00 A. M.

There is also a supervisory agent's position at Appleton, which is monthly rated, and is covered by Rule 7 of the Agreement between the parties. The pertinent part of Rule 7 reads:

"(a) All positions listed in paragraph (b) of this rule shall be classified as supervisory agency positions and such positions and incumbents thereof shall come within the purview of all rules of this schedule, except Rule 4(a) and (b), Rules 6, 12, 13, 16, 20, 22, 27, 28

Only one second-class train (daily) and one third-class train (daily except Sunday), in each direction, operate through Appleton, and in this emergency the Supervisory Agent performed whatever train order, clearance, and other work was ordinarily required of the Operator-Clerk.

Claimants B. J. Schraufnagel and R. M. Schuette are regularly assigned operators at Neenah, Wisconsin. Mr. Schraufnagel's assigned hours are 3:00 P. M. to 11:00 P. M., Wednesday through Sunday, and Mr. Schuette's assigned hours are 7:00 A. M. to 3:00 P. M., Monday through Friday.

On February 11, 1966, claims were initiated on behalf of the first, second and third trick operators, as well as the swing man at Neenah, Wisconsin, alleging violation of their rights account not being called and used at Appleton on their rest days. Upon denial by the Division Superintendent, only the claims of Messrs. Schraufnagel and Schuette were progressed further.

Copies of schedule agreement, effective July 1, 1956, and supplements thereto, between the parties to this dispute, are on file with the Board and made part of this record by reference.

OPINION OF BOARD: After working his regularly assigned call on Saturday, December 19, 1964, the operator-clerk at Appleton, Wisconsin, was injured in an automobile accident and therefore unable to work his assignment until March 20, 1965. The Supervisory Agent at this station was required by Carrier to perform duties of the Operator-Clerk.

Carrier claims this was proper under the emergency definition of Rule 22 of the Agreement.

The Supervisory Agent, however, was an employe under the provisions of Rule 7 of the Agreement:

"All positions listed in paragraph (b) of this rule shall be classified as supervisory agency positions and such positions and incumbents thereof shall come within the purview of all rules of this schedule, except Rule 4, (a) and (b), Rules 6, 12, 13, 16, 20, 22, 27, 28 and 30. Incumbents of positions listed in paragraph (b) of this rule will not perform work ordinarily done by telegraph or telephone operators except in cases of emergency . . ."

This Supervisory Agent at Appleton is specifically excluded from the provisions of Rule 22 which defines "in emergency":

"NOTE: For the sole purpose of applying Rule 22 the term 'in emergency' is defined as follows:

1. Death
2. Sickness
3. Shortage of qualified employees.
4. Inability to get extra men to point needed."

It is clear from the language of the Agreement it was not intended that the definition in Rule 22 be applied as an exclusive test of "emergency" when excepted Supervisory Agents were involved.

We find from the facts of this case that no real emergency existed; that there was reasonable time and opportunity for Carrier to have obtained the services of other employees to perform the duties.

Therefore, we find that the Agreement was violated.

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

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March 1969.