



Award No. 17232

Docket No. TE-16300

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated the Agreement between the parties when on the 22nd day of February 1965, a legal holiday (Washington's Birthday), it refused to permit Centralized Traffic Control-Telegrapher F. V. Eady to work position No. 599 in "H" Office, Palestine, Texas, and permitted Relief Manager W. M. Dickey a junior employee, to work the CTC-telegrapher position in conjunction with the manager-telegrapher position.
2. Carrier shall compensate CTC-Telegrapher F. V. Eady eight (8) hours punitive rate of pay in addition to the eight (8) hours pro rata pay he received for suspending work on the date in question.

EMPLOYEES' STATEMENT OF FACTS: H Office is a communication office located in Palestine, Texas on the Missouri Pacific Railroad. There are three positions in this office that are required to perform service seven days per week irrespective of holidays. These positions are identified as centralized traffic control telegrapher positions. The duties assigned to these positions embrace the operation of a CTC machine that permits trains to enter, leave or be switched through the Palestine Yard and extending approximately ten miles in three directions, north, south and west. In addition to the CTC operations these positions handle train orders and communication by Morse, telephone and teletype. Position No. 599, the regular assignment belonging to Claimant F. V. Eady, works from 7:00 A.M. to 3:00 P.M. Monday through Friday with rest days of Saturday and Sunday. The manager-telegrapher position is also assigned 7:00 A.M. to 3:00 P.M., Monday through Friday, with rest days on Saturday and Sunday. The manager's position entails duties such as Morse, teletype and testing of wires and regulating the same. TCU Exhibit 1 is a bulletin showing that the position works every day and there is no exclusion or exception as to holidays.

By message dated February 15, Superintendent J. C. Morrow issued the following instructions:

The awards cited by you do not involve facts similar to this dispute and lend no support for your claim.

In view of the foregoing, claim is without merit or rule support and is hereby declined.

Yours truly,
/s/ B. W. Smith"

11. In further progression of this dispute on the property, the General Chairman at no time disputed the fact that claimant had not performed any duties assigned in "H" Office, including operating the control console, controlling the signals and switches at Palestine, exclusively. However, the General Chairman persisted in his contention that the first shift position of CTC-Telegrapher in "H" Office at Palestine could not be blanked on a holiday.

OPINION OF BOARD: This dispute arose because of Carrier's failure to have permitted Claimant to work his first shift CTC-Telegrapher position in the "H" office at Palestine, Texas on a legal holiday, in this instance Washington's Birthday, February 22, 1965, which holiday fell on Claimant's regularly assigned work day.

The Organization's position is that when work is required to be performed on a holiday such as here, the regular occupant of said position, Claimant herein, has the right to perform it; that it is undisputed that the first shift manager, W. M. Dickey, performed the duties of Claimant's position on the holiday in question; that Carrier did not prove that the said manager had ever performed CTC work on a regularly assigned work day, although he does it on rest day relief; that the work involved here belongs exclusively to the CTC operator on his regularly assigned 5-day work week.

Carrier's defense to this claim is that Carrier is not prohibited from blanking positions such as Claimant's on legal holidays; that Claimant's position is not assigned to work holidays, but it is a 5-day position assigned to work five days except holidays; that work within the "H" office at Palestine is not specifically assigned to one employee, and Carrier thus has the right to have the manager perform work of a blanked position on a legal holiday inasmuch as said manager performs the work of Claimant's position on Claimant's rest days.

It is undisputed that Carrier's manager performed the duties of Claimant's position on the day in question. However, Claimant's position is a 5-day assignment, rest days Saturday and Sunday, first shift 7:00 A.M. to 3:00 P.M. in the "H" office at Palestine, Texas. The manager's position is also a first shift, 7:00 A.M. to 3:30 P.M., 7-day assignment with rest days Saturday and Sunday. It is also undisputed that the assistant manager and night chief operator perform the duties of Claimant's position on Claimant's rest days. Therefore, it can be concluded that the disputed work performed on said holiday did not belong exclusively to Claimant's position.

Petitioner has cited Rules 1, 4(d), 5 and 15 as being violated by Carrier in this instance. The manager's position is under the scope rule of the Agreement, and the scope rule being general in nature, the burden was upon Petitioner to prove that the work belonged exclusively to his position, which we have pointed out aforesaid does not belong exclusively to Claimant's said position.

Further, an examination of said Rules 4(d), 5 and 15 reveal that they have no application to the instant dispute and, therefore, Petitioner's allegations that they were violated are without merit.

Inasmuch as the Agreement was not violated, we must deny this claim.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

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