



Award Number 17436

Docket Number TE-16299

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYES UNION

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago & North Western Railway, that:

1. Carrier violated the terms of an agreement between the parties hereto on Sunday and Monday, March 21 and 22, 1965, and on each Sunday and Monday thereafter to and including January 2 and 3, 1966, when it required or permitted employees outside the scope of said agreement to perform work assigned to the 4 A.M.-12 Noon Telegrapher-Clerk position in the Train Dispatchers' Office, Norfolk, Nebraska, thereby improperly relieving the regular occupant of the position on his assigned rest days.
2. Carrier shall, because of the violation set forth in paragraph 1 hereof, compensate,
 - (a) Kenneth R. Prah, regular occupant of the telegrapher-clerk position, Train Dispatchers' Office, Norfolk, Nebraska, eight (8) hours pay at the time and one-half rate for each Sunday and Monday, March 21 and 22, 1965 to and including Sunday and Monday, June 27 and 28, 1965, and
 - (b) Russell K. Monson, successor to Kenneth R. Prah on the telegrapher-clerk position, Train Dispatchers' Office, Norfolk, Nebraska, eight (8) hours pay at the time and one-half rate, for each Sunday and Monday, July 4 and 5, 1965, to and including Sunday and Monday, January 2 and 3, 1966, at which time carrier re-established the nominally abolished relief position.
3. *Carrier shall, in addition to all of the foregoing, re-establish the abolished telegrapher position at Norfolk, Nebraska, 4 A.M. to 12 Noon each Sunday and Monday, and telegraphers affected by the abolishment be returned to the positions held immediately prior to March 21, 1965, and compensated for any loss incurred in time and expense resulting from the abolishment of the telegrapher position at Norfolk, Nebraska, each Sunday and Monday 4 a.m. to 12 Noon.

*Note—Carrier re-established the position in question effective January 9, 1966, therefore this part of the claim is moot.

"216. For train orders delivered by the train dispatcher the requirements as to the record and delivery are the same as at other offices."

For the information of the Board there are only two locations, Boone and Chicago, at which dispatchers are employed by this company and telegraphers are also on duty 24 hours a day. At other points where dispatchers are located, telegraphers are on duty on one or two shifts during the day, and dispatchers transmit any train orders or messages necessary while telegraphers are off duty.

Effective February 1, 1966, the carrier established a relief telegrapher position at Norfolk, working two days per week, Sundays and Mondays, from 4:00 A.M. to 12 Noon. At the same time, the second relief dispatcher position at Norfolk was abolished, and thereafter, an extra dispatcher has been used to perform service on three rest days of regularly assigned dispatchers each week. As a result of the changes requested by the organization in presenting this claim, the former incumbent of the second relief dispatcher position, which was abolished, has been working three days per week as an extra train dispatcher, and has also been assigned to work two days per week as a relief telegrapher, instead of working five days per week as a relief train dispatcher.

Claim is presented in behalf of Kenneth R. Prah, who was regularly assigned as second telegrapher-clerk, on Sundays and Mondays from March 21, 1965 through June 28, 1965, and in behalf of Russell K. Monson, his successor in that position, from Sunday, July 4, 1965 until Monday, January 3, 1966.

The notice of abolishment of the position of relief telegrapher at Norfolk was issued on March 4, 1965, effective March 16, 1965. A copy of the notice is attached as Carrier's Exhibit "A".

Although the position of relief telegrapher was abolished effective with the termination of his assignment on March 16, 1965, no claim was submitted until May 17, 1965. The District Chairman's letter dated May 14, 1965 bears the postmark "Albion, Nebr., May 17, P.M., 1965." A photo-copy of the envelope is attached as Carrier's Exhibit "B".

Accordingly, no claim was presented within 60 days of the occurrence on which the claim is based.

The claims have been denied.

(Exhibits not reproduced)

OPINION OF BOARD: Prior to March 21, 1965 there was a Telegrapher-Clerk position at Carrier's Norfolk, Nebraska office with assigned hours 4 A.M. to 12 Noon, Sunday through Thursday and rest days Friday and Saturday. Relief on rest days was performed as a part of a regular relief assignment filled by a Telegrapher. On March 21, Carrier inaugurated a change: a new position was created to work the aforementioned hours Tuesday through Saturday, with rest days of Sunday and Monday. The relief work on Sunday and Monday was assigned to a train dispatcher, an individual not covered by the Telegraphers' Agreement.

It is alleged Carrier has violated Rule 43 1/2 (1) WORK ON UNASSIGNED DAYS reading:

"Where work is required to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee."

Carrier makes persuasive argument that the disputed work cannot be claimed by the Organization by reason of either the Scope Rule or an exclusivity of past performance, citing Rule 56 of the Agreement authorizing train dispatchers to handle train orders and also citing past practices on the property under which train dispatchers were used to perform duties identical with those performed in the disputed position.

Carrier's arguments would be perfectly valid but for a well-recognized line of decisions interpreting Work on Unassigned Days rules identical with the one with which we are here concerned.

The landmark decision is that authored by Referee Leiserson in Award 6689. With minor and unimportant changes, the award might be re-written here; the arguments of Carrier are the same. The claim was sustained. Other like awards are 14160 (Schmertz), 14703 (Dolnick), 15158 (House) and 15328 (House). We hold that such awards are controlling and require a sustaining award herein.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1969.