



Award Number 17581

Docket Number TE-16894

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago and North Western Railway (M&StL District), that:

1. Carrier violated and continues to violate the terms of an Agreement between the parties hereto when commencing January 22, 1966 it purportedly blanked the Saturday rest day of the second shift telegrapher's position at Hopkins, Minnesota when work of the position remained to be performed, and caused and required employees of another craft, not covered by the Agreement, to perform it.
2. Carrier shall, because of the violation set forth above, commencing Saturday, January 22, 1966, Saturdays January 29, February 5, 12, 19, 26, March 5, 1966, compensate J. R. Hawkins, his relief or successor, eight (8) hours' pay at the time and one-half rate of the position occupied, and each Saturday thereafter so long as the violation complained of continues.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the Chicago and North Western Railway Company (Minneapolis and St. Louis Railway District), hereinafter referred to as Carrier, and its employees in the classes named therein, hereinafter referred to as Employees, represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Union, effective September 1, 1955, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The question at issue in this dispute involves the right of the regular occupant of the second shift telegrapher's position at Hopkins, Minnesota to perform work on Saturday, an unassigned rest day of his position, which he performs during the work week thereof.

At page 64 of the parties' Agreement are listed the positions covered thereby at Hopkins, Minnesota on the effective date thereof. The listing reads:

Station	Position	Hourly Rate	Overtime Rate
Hopkins	Agent	2.081	3.1215
	1st Teleg.	1.877	2.8155
	2nd Teleg.	1.877	2.8155
	3rd Teleg.	1.877	2.8155
	1st Rel. Teleg.	Rate same as position relieved.	

2. That on various Saturdays the first-trick operator worked overtime.

During the course of handling the case on the property no contention was made that the working of the first trick operator overtime was in itself a violation of schedule rules, however, the working of the first trick operator overtime was used by the General Chairman as a basis for attempting to support his contention that an operator on the second trick was "needed" on Saturdays.

The single issue involved, therefore, in the handling of the case on the property, was the General Chairman's contention that it was improper not to have an operator assigned on the second trick on Saturdays and permit train crews during such second trick on Saturdays to handle their own switches.

Claim has been denied.

(Exhibits Not Reproduced)

OPINION OF BOARD: Petitioner is contending that Carrier violated the Agreement when it permitted train crews to manually operate two (2) switches at Hopkins, Minnesota on Saturday, an unassigned rest day of his second shift telegrapher's position, which switching duties Claimant regularly performs during his work week.

Prior to January 20, 1966, the second shift telegrapher position was a seven (7) day position, with work week Tuesday through Saturday and rest days on Sunday and Monday. The rest days were protected by regular relief assignment. On January 20, 1966 the work week of said position was changed to Monday through Friday with Saturday and Sunday rest days, and no telegrapher on duty from 4:00 P.M. until 11:59 P.M. on Saturday. Later the hours of the second shift telegrapher position was changed to 3:00 P.M. to 11:00 P.M.

The Petitioner is alleging that Carrier violated Rule 1 (Scope Rule), Rule 4, Rules 20 and 23 (c) of the Agreement.

**"RULE 1
SCOPE**

"(a) (1) Any employe performing the duties of Telegrapher, Telephone Operator (except switchboard operator), Agent, Agent-Telegrapher, Agent-Telephoner, Towerman, Leverman, Tower and Train Directors, Block Operators, Radio Operators handling train orders of communications of record, and Operators of mechanical transmission or reception devices (see (2)), shall be considered an employe within the meaning of this Agreement, all of whom where hereinafter collectively referred to as 'employees.'

* * * * *

"(b) Positions covered by this Agreement belong to the employees covered thereby, and no position shall be removed from the scope of this Agreement except by mutual agreement.

* * * * *

**"RULE 20
THE 40-HOUR WEEK—REST DAYS—SUNDAYS—HOLIDAYS**

* * * * *

(k) Work on Unassigned Days—Where work is required by the carrier to be performed on a day which is not a 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.”

The Organization’s position is that only telegraphers had, prior to this dispute, performed the work of handling manually thrown switches at Hopkins, Minnesota; that under Rule 20 (k) of the Agreement the regular employee, who occupies the five work days of the position, and being the Claimant in this instance is entitled to the work that is required by Carrier to be performed on a day which is not part of any assignment; that the interpretation of said Rule 20 (k) by the Forty Hour Week Committee clearly provides that in the absence of a qualified extra or unassigned employee who would otherwise not have forty hours of work that week the regular employee shall be used.

The Carrier argues that there is no rule in the Agreement that the work of handling of switches at Hopkins is exclusively assigned to telegraphers; that train crews regularly handle switches in the performance of their work; that the past practice on the property has clearly recognized that telegraphers do not have the exclusive right to handle ground switches and that this is borne out by Article 2 of the Joint Relations Agreement between the Railroad Telegraphers and Railroad Trainmen; that the 40-Hour Week Rule was intended as a “make-rest” rule and not a “make-work” rule.

Carrier strongly argues that the telegraphers Scope Rule is general, and to establish exclusive rights to particular work under that rule the Employees must prove the existence of a system-wide past practice of exclusive performance. With this conclusion, we agree. However, in this dispute we are confronted with the so-called “Unassigned Work Day Rule”. This Board has dealt with similar rules in many awards, which are conflicting. This was noted by the Board in Award No. 14703, when we said: “These divergent views are not without reason. The Awards of this Division hold both ways. There is direct conflict in the application of the principles urged by the parties. . . .”

This Board in said Award 14703, which considered a similar rule as Rule 30 (k) herein, stated:

“We are inclined to accept the principle enunciated in those Awards which hold that Rule 10 (m) is specific and prevails over any general Rule, including the Scope Rule. Under this holding, the question whether the work belongs exclusively to the Agent-Operator becomes irrelevant because it is not a factor essential to the determination of the dispute. This, we believe, is the sounder, the more cogent and the more decisive principle relating to all of the factors concerning the 40 hour workweek and the related work rule on unassigned workdays.”

See Also Award No. 17436.

Therefore, it is our conclusion that Carrier violated said Rule 20 (k) of the Agreement and the claim will be sustained.

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 25th day of November 1969.