



Award Number 17751

Docket Number TE-17368

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

THE UNION TERMINAL COMPANY (DALLAS, TEXAS)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Union Terminal Company (Dallas), that:

1. Carrier violates and continues to violate the Agreement between the parties when it improperly fills the second trick telegrapher position at "UT" Office, Dallas, Texas, by using employees on an overtime or call basis.
2. Carrier shall compensate the senior idle extra employee in the amount of a day's pay (8 hours) on each date such violation occurs, beginning July 20, 1966 and continuing on a day-to-day basis until the violation is corrected.
3. Carrier shall compensate the occupant of the first trick position, L. C. Fisher, and/or his relief and successors, in the amount of one hour's pay at the time and one-half rate on each date account being held on duty after proper quitting time beginning July 20, 1966 and continuing thereafter on a day-to-day basis until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The agreement between the parties effective December 1, 1937, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Prior to September 1, 1965, there were two telegrapher positions in the Dallas, Texas, Union Terminal Office. The first trick telegrapher position was assigned to work from 6:30 A.M. to 2:30 P.M. daily. The second trick telegrapher position was assigned to work 4:15 P.M. to 12:15 A.M. daily. A regular relief employee worked the two rest days of each position.

Effective September 2, 1965, Carrier abolished the second trick telegrapher position and changed the assigned hours of the first trick position to 8:30 A.M. to 5:30 P.M., with one hour for lunch. At the same time, Carrier established a 8:00 P.M. to 10:00 P.M. call to be worked daily and filled from the extra list. Because of this violation, the Employees filed a claim which was settled by a memorandum of agreement dated October 7, 1966, reading as follows:

"In view of the fact that you have indicated to the undersigned that the telegraph office at "UT" will be abolished and the work discontinued thereat, with North Tower being reclassified to do such work, approximately July 10th or 11th, 1967 and do not wish to agree to a 3-month time extension on this matter, I can only appeal this issue and claim to the President for further handling. * * *"

No claim or grievance was ever filed with the Carrier in connection with discontinuance of the "UT" office or abolishment of the first-trick Telegrapher position and no such claim is before the Board—the sole issue for consideration here is whether Carrier's abolishment of the second-trick Telegrapher's position, and the disposition of the small amount of work remaining (during the period July 20, 1966 to July 11, 1967) was a violation of the Agreement.

For the record, and to leave no loose ends dangling, we enclose herewith as our Exhibit "D", an actual photocopy reproduction of a Memorandum of Agreement dated October 7, 1966, finally settling and disposing of the claim submitted by the Organization on September 6, 1965 (Carrier's Exhibit "B", Sheets 1, 2 and 3) by the payment of a total of \$650.00 to the three Telegraphers named in that claim. That claim involved use of an extra telegrapher on a "Call" basis during the period September 2, 1965 through July 19, 1966, and the claim that they were entitled to be paid a minimum of a day's pay.

Carrier's Exhibit "A", Sheets 1 through 11 is a complete photocopy reproduction of all of the correspondence between the parties during the handling of the present claim on the property. Carrier's Exhibit "B", Sheets 1 through 7, is a photocopy reproduction of certain correspondence in connection with a claim filed by General Chairman Riley on September 6, 1965, made a part of the record herein by reference in General Chairman Riley's letter of September 13, 1966 (Carrier's Exhibit "A", Sheet 2). Carrier's Exhibit "C" is a photocopy of an actual Clearance issued to ATSF Train No. 12, showing the small amount of work involved in its preparation. Carrier's Exhibit "D" is a photocopy reproduction of a Memorandum of Agreement entered into on October 7, 1966 making final settlement and disposition of the claim presented by the Organization in connection with abolishment of the Second Trick Telegrapher's position and having an extra telegrapher perform the small amount of work that remained, on a Call basis, in addition to working the rest days of the First Trick Telegrapher.

The claim before the Board, involving use of the First Trick Telegrapher on a Call basis during the period July 19, 1966 through July 11, 1967, has been progressed on the property in accordance with the provisions of the amended Railway Labor Act, including a discussion of the claim in conference. It is now properly before the Board for consideration.

The current working agreement between the parties to this dispute, effective December 1, 1937, is on file with the Third Division, National Railroad Adjustment Board.

OPINION OF BOARD: Prior to September 2, 1965, there were two telegrapher positions in "UT" office, located in the passenger station, Dallas Texas. The first shift was assigned 6:30 A.M. to 2:30 P.M., seven days per week. The second shift was assigned 4:15 P.M. to 12:15 A.M., seven days per week.

Effective this date, Carrier abolished second shift position and rearranged hours of first shift to 8:30 A.M. to 5:30 P.M., with one hour for lunch. In addition, a daily call—8:00 P.M. to 10:00 P.M., was assigned to an extra employee.

Because of these unilateral actions of the Carrier, the Organization filed a grievance alleging Agreement violations in several respects. On July 19, 1966, as a result of a conference between the parties, Carrier discontinued using an extra employee to perform the call service. On this date a directive was issued by Carrier to occupant of first shift position and his rest day relief assigning the daily call to the regularly assigned employee, effective July 20, 1966.

After the Organization had served notice of intent to submit the 1965 grievance to this Division, the parties entered into a settlement agreement on October 7, 1966, providing, inter alia, for withdrawal of the claims submitted in the notice of intent. The agreement specifically saved and excepted from the settlement the claim filed with Carrier on September 13, 1966, and now pending before this Division. Neither party raises any procedural issues. We now turn to the merits of the dispute.

The Organization bases its claims primarily on two points, (1) continued performance of work during the assigned hours of the former second shift, abolished effective September 2, 1965; (2) assignment of a meal period to the first shift. The theory is predicated upon substantiality of work continuing to be performed after the discontinuance of the second shift. The second claim is predicated upon the first, in that if the first claim is valid, the telegraph office continued to be a two shift office and the meal period was improperly assigned.

Organization contends that three hours and fifteen minutes work, formerly performed during regular assigned hours of the second shift, continued to be and was performed on a daily basis, after the discontinuance of the position. This contention is supported, the Union says, by the fact that after September 2, 1965, the first shift incumbent regularly worked from 4:15 P.M. to 5:30 P.M., within the former hours of the second shift, or one hour and fifteen minutes, and the daily call, beginning at 8:00 P.M. and ending at 10:00 P.M., two hours more. It contends that this is a substantial part of the second shift assignment, and therefore, so long as such work was required to be performed, the second shift could not be abolished.

Carrier contends that there was no rule violation in changing the regular hours of the first shift, and that a substantial amount of work did not remain to be performed on the second shift.

Both parties cite and discuss our Awards 896, 5235, 14906, 15513 and 15521. They are in agreement that the question, requiring resolution, is one of fact. The Carrier in its Ex Parte Submission summarizes the case law of this Board to hold:

1. A carrier is at liberty to abolish a position when a substantial portion of the work thereof disappears, provided of course that the remaining work is properly assigned under the Agreement and not transferred to employees not covered by the Agreement.
2. A carrier is not at liberty to abolish a position when a substantial portion of the work thereof remains.

Let us discuss first the change of hours on the first shift. In letter disallowing the claim, Carrier's General Manager, highest officer handling the claim, pointed out that Article VII, paragraph (g) provides: "At one shift offices the starting time shall begin between five-thirty and eight-thirty A.M. or P.M." Since we do not find any prohibition against changing assigned hours at one or two shift offices, upon proper notice, for the purpose of this dispute, the change of starting time from 6:30 A.M. to 8:30 A.M., becomes irrelevant. Thus, the time worked between 4:15 P.M. and 5:30 P.M. loses much of its significance insofar as determining substantiality of work remaining after abolishment of the second shift.

It was Carrier's contention from the outset that little work was performed during the daily call. In original denial of the claim, September 16, 1966, the Signal Supervisor called attention that the work was clearing two passenger trains. He said that train orders were seldom handled. In letter of denial, by General Manager, dated November 14, 1966, it was noted that the work consisted of clearing a passenger train scheduled to depart at 8:30 P.M., and another at 9:20 P.M. He referred to the work as "light train order work." After conference on June 26, 1967, the General Manager called attention to the fact that there was only one train to be cleared during the call, i.e., ATSF No. 12, scheduled to depart at 8:30 P.M. He further said: "As stated in conference, there is so little work to do at Union Terminal Telegraph Office that the justification for an eight hour assignment on the second shift does not exist."

Lastly, Organization introduces copy of Agreement, dated January 6, 1967, wherein it was agreed to abolish the remaining position in "UT" telegrapher office and to move the work to North Tower. The Agreement also provided for reclassification of positions at North Tower and increases in rates of pay. In letter of June 29, 1967, General Chairman pointed out that he understood the remaining position would be abolished on July 10 or 11, 1967. Carrier says it was abolished on July 11, 1967.

We agree with the parties that the case law of this Board, as enunciated in the above cited awards, and others, hold that a position may not be abolished, if a substantial part of the work remains to be performed. In this case, the Organization has not proffered any probative evidence, other than assigned hours time elements, to support its case. It relied solely on the call assignment as constituting two hours of work; and on the one hour and fifteen minutes, because these hours were formerly worked by second shift. Carrier from the outset contended that call work consisted of issuance of "clearances" for two passenger trains, later only one. It contended that the change of hours of the first shift did not violate the rules. Finally, the Agreement of January 6, 1967, providing for the abolishment of the first shift position, lends support to Carrier's contention that work was dwindling, due to discontinuance of passenger train service.

Attaching presumptive evidential value to assignment of hours as indicative of work performed, does not suffice. When Carrier contended, factually, and it was not denied, that it had the right to change hours of assignment; that only a few minutes work was required during the call, then the burden shifted again to Petitioner to prove its case. We have carefully examined the submissions and do not find evidence of probative value showing that three hours and fifteen minutes work was required to be performed after abolishment of the position. Absent such evidence we have no criteria to determine substantiality of the work remaining and must deny the 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 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 the Agreement was not violated.

A W A R D

Claim denied for failure of proof.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1970.