

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

CHICAGO GREAT WESTERN RAILWAY COMPANY

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

1. Carrier violated the Agreement between the parties when in changing rest days it required C. M. Clark to suspend work during regular hours on September 28, 29, 30 and October 1, 1965, the second, third, fourth and fifth work days of his work week commencing September 27, 1965.

2. Carrier shall be required to compensate C. M. Clark eight (8) hours' pay for each day, September 28, 29, 30 and October 1, 1965 at the straight time rate. (Rate of the telegrapher-clerk position at Council Bluffs, September 28 and 29, and rate of the telegrapher-clerk position at Carroll, September 30 and October 1, 1965).

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective June 1, 1948 (reprinted May 1, 1958) as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Prior to September 28, 1965, C. M. Clark was the occupant of a relief position; said position worked each Monday on the agent-telegrapher position at Harlan, Iowa (hours 8:00 A.M. to 5:00 P.M., with one hour off for meal), on Tuesday and Wednesday on the telegrapher-clerk position at Council Bluffs, Iowa (hours 8:45 A.M. to 5:45 P.M., with one hour for meal), and on Thursday and Friday on the telegrapher-clerk position at Carroll, Iowa, with assigned hours 8:45 P.M. to 5:45 A.M.

As shown above, claimant C. M. Clark's work week started on Monday and ended on Sunday, with Saturday and Sunday rest days.

Carrier's Chief Dispatcher issued notice that claimant Clark's relief position would be abolished effective 12:01 A.M., September 28, 1965 (Tuesday). This meant that Clark worked his assignment on Monday, September 27 (at Harlan). After that, according to Carrier, Clark had no right to any position except in the event he exercised his seniority rights and displaced on another position.

of the bulletin issued, Claimant bid on the advertised position, specifying in his bid that such was per Rule 8 (a) (5).

I cannot agree that any loss of compensation on claim dates was due solely to Claimant's failure to exercise his seniority rights because Claimant did all that was required of him under the rules to retain his position and the attendant compensation to which he is entitled.

Your decision cannot be accepted as final.

Yours truly,

/s/ L. M. Kingsbury
General Chairman"

OPINION OF BOARD: Claimant was the occupant of a relief position with the following duty stations and hours of assignment: On Monday he worked on the agent-telegrapher position at Harlan, Iowa, hours from 8:00 A. M. to 5:00 P. M. On Tuesday and Wednesday, he worked on the telegrapher-clerk position at Council Bluffs, Iowa, hours 8:45 A. M. to 5:45 P. M. On Thursday and Friday, he worked on the telegrapher-clerk position at Carroll, Iowa, with assigned hours 8:45 P. M. to 5:45 A. M. Saturday and Sunday were his regularly assigned rest days.

Carrier's Chief Dispatcher issued a notice that Claimant's relief position would be abolished effective 12:01 A. M., September 28, 1965 (Tuesday). Claimant worked his assignment on Monday, September 27th, at Harlan. On September 17, 1965, Bulletin 34 was issued by the Carrier advertising as a new position Relief Position No. 3 which was to be established effective Saturday, October 2, 1965 to furnish rest day relief on the telegrapher-clerk position at Council Bluffs, Iowa, on Saturday and Sunday; on the agent-telegrapher position at Harlan on Monday, and, on the 12 Noon to 8:00 P. M. telegrapher-clerk position at Clarion on Tuesday and Wednesday. Headquarters for this position was Council Bluffs, Iowa, the same headquarters prior to the elimination of the two days of work at Carroll, Iowa.

Claimant placed his bid on the new position and was awarded the assignment. Having lost 4 days of work in his work week beginning September 27, 1965 (Monday), he presented time slips to the Chief Dispatcher for a day's pay, each day, September 28, 29, 30 and October 1, 1965, basing his claim on the 5 day week guarantee. The Chief Dispatcher declined to allow the time slips on the grounds that the original relief position was properly abolished adhering to all the time provisions of the governing Agreement.

The Organization, petitioning this Board on behalf of the Claimant, relies principally on Rule 8 (c) (5) of the Agreement, which reads as follows:

"(5) Changes in the assignment of regular relief positions from those advertised will constitute a new position, but the employe holding the regular relief position at the time of change will have the option of retaining it or exercising displacement privileges. In the latter event, the relief position so vacated will be rebulletined. A change in the starting time of a position on which they relieve does not grant regular relief employes displacement privileges under this rule."

The Organization arguendo states categorically that when the relief position was changed, Claimant had the right to retain the position or to exercise displacement privileges, only then could Carrier rebulletin his position; further, that since Claimant chose to retain his position, he, in effect, occupied his regular assignment at all times.

Carrier propounds the argument that it has, in the exercise of its managerial prerogatives, the power and the right to abolish positions adhering to carefully drawn time provisions; that, essentially, this is what has been done in this case, and that Claimant should have exercised his seniority rights under Rule 22.

The issue thus framed is whether or not we have in this case a simple change of assignment, as advocated by the Organization, or a true abolishment of the position, as advocated by the Carrier.

Under the circumstances of this case, we are not questioning Carrier's right to abolish positions. This right has been well recognized in many awards of this Board. We must, however, look beyond Carrier's mere declaration of abolishment to ascertain whether in fact it constituted a true abolishment. Considering the facts as outlined infra, it is our judgment that Carrier's action in this case was a change of assignment, rather than an abolishment. Hence, we will sustain the claim as submitted.

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 30th day of June 1970.