

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
THE KANSAS CITY SOUTHERN RAILWAY COMPANY
LOUISIANA & ARKANSAS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Kansas City Southern Railway Company (L&A), that:

1. Carrier violated the Telegraphers' Agreement when it blanked the relay-telegrapher-wire chief position in "CD" Office, General Offices Shreveport, Louisiana, occupied by Telegrapher, Mr. F. A. Moore, and did not blank the work from this position.

2. Carrier shall compensate Mr. F. A. Moore for eight hours pay at the penalty rate, which is the difference between the 8 hours pro-rata rate allowed him due to blanking his job and the 2½ times rate that he would have received had he worked his assignment performing the work that was allotted to others.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

An Agreement between the parties effective January 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was timely presented; progressed in accordance with the provisions of the Agreement, including conference with the highest officer designated by the Carrier to receive appeals; and has been declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

This claim grew out of Carrier's action in blanking Claimant's position on a holiday, Tuesday, July 4, 1967, and assigning work regularly assigned to his position to employees in the same craft in another office in the same terminal.

(b) ISSUE

Blanking a position on an unassigned day (a holiday) and assigning work regularly performed by the incumbent of the position, to employees in the same craft in another office.

(n) Holiday Work.

I. Time worked on the following holidays; namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation or by proclamation shall be considered the holiday) within the hours of the regular weekday assignment shall be paid for on the following basis:

A. (1) Employees occupying positions requiring a Sunday assignment of the regular week day hours shall be paid at the rate of time and one-half with a minimum of eight hours, whether the required holiday service is on their regular positions or on other work."

(e) HANDLING ON THE PROPERTY

The handling on the property was exhaustive as evidenced by exact copies of the correspondence exchanged between the parties, which follow as 14 pages of this submission.

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

August 18, 1967
43-13 (F. A. Moore)

CERTIFIED MAIL #913746
RETURN RECEIPT REQUESTED:

Mr. L. M. Hough
Chief Dispatcher K. C. S. Lines
4601 Blanchard Road
Shreveport, La. 71107

Dear Sir:

Claim is presented as follows:

STATEMENT OF CLAIM:

1. The Carrier violated the Telegraphers' Agreement when it blanked the relay telegraph-wire chief position in "CD" Office, General Offices Bldg., Shreveport, La., occupied by telegrapher Mr. F. A. Moore, and did not blank the work from this position.

2. The Carrier shall compensate Mr. F. A. Moore for eight hours pay at the penalty rate, which is the difference between the 8 hours pro-rata rate allowed him due to blanking his job and the 2½ times rate that he would have received had he worked his assignment performing work that was allotted to others.

STATEMENT OF FACTS:

The Carrier on or about June 28, 1967 advised Mr. F. A. Moore not to fill his assignments in "CD" Office, Sheveport, La., on July 4, 1967 due to legal holiday. The Carrier thus blanked this position and

the "run messages" at "SY" (Lewis) was also assigned to work on July 4, 1967. In other words, it was not an unassigned day for either claimant or Lewis, and obviously the awards cited by you concerning work on "unassigned days" are not pertinent here.

While you have cited a myriad of awards, none of them even remotely touches on the issue involved here, which is the right of the Carrier to blank a position on a holiday. Possibly this is due to the fact that the Adjustment Board many times has held that in the absence of some specific restriction the Carrier is entitled to blank a position on a holiday. Awards 8539, 8705, 9491, 11079, 11131, 11253, 11433, 11940, 12392 and others. The following excerpt from Award 9491 is pertinent:

* * * * *

OPINION OF BOARD: The facts concerning this claim are not substantially disputed. Claimant was regularly assigned to Yard Clerk position T-2389, West City Yard, Fort Worth, Texas, hours 8:00 A. M. to 4:00 P. M., Monday through Friday, rest days Saturday and Sunday. W. L. Young, a regular relief yard clerk, occupied Position No. 6, East City Yard and Lancaster Sub-Yard, also at Fort Worth, assigned hours 7:00 A. M. to 3:00 P. M., Friday through Tuesday, rest days Wednesday and Thursday. These positions and their occupations were covered by the Agreement. Both positions were assigned in the same seniority district and the occupants were listed on the same seniority roster.

Labor Day, September 5, 1955, fell on a regular work day of both Claimant's and Young's regular work week assignments. Carrier blanked Claimant's position and worked Young's position on that holiday. About 11:00 A. M. that day, it was discovered that the switching list prepared by the third trick Yard Clerk was missing. Young was directed to prepare such list for use at the West City Yard. This work was ordinarily performed by the Claimant during his regular work week. (Emphasis ours.)

Petitioner contends that the preparation of the switching list by Young for use at the West City Yard on the holiday mentioned violated Rule 30(f) of the Agreement which states that:

"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 employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe assigned that class of work."

We are not persuaded that, on the facts, this Rule supports the claim. The Rule specifies the condition that the required work occur "on a day which is not a part of any assignment" and permits the performance of the work "by the regular employe assigned that class of work." The record establishes that the preparation of the switching list was done on a holiday which was a part of Young's

assignment and within the hours thereof, and that such work was within the class of work assigned to him as a regular employee. Neither the agreement nor the fact that this work was ordinarily performed by the Claimant during his regular work week demonstrate that it belonged exclusively to him. See Awards 5922, 6077, 7954. The record does not suggest that Claimant's position was blanked on the holiday so that Young could prepare the switching list. Under these circumstances, the Rule does not substantiate the claim. See Awards 7137, 8003, 8198, 8872. (Emphasis ours.)

The difference in the yards and their geographical separation at the same location are alone insufficient to alter the result. The work was in the same class and craft. The positions and their occupants were in the same seniority district and the occupants were on the same seniority roster. See Awards 8003, 8198, 8278.

* * * * *

In view of all the foregoing, claim is declined.

Yours very truly,

D. E. Farrar

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

November 21, 1968
KC-115

Mr. D. E. Farrar
Vice-President Personnel
KCS-L&E Railway Company
114 West 11th Street
Kansas City, Missouri

Dear Mr. Farrar:

This acknowledges your letter of April 3, 1968, file 013.35-132, which was in reply to mine of Feb. 9, 1968, file KC-115, and refers to our conference October 1, 1968.

I would refer you again to the statement of the telegraphers employed at Shreveport, La. in connection with the handling of "run messages" between offices of the Kansas City Southern and CD General Offices, Shreveport, La. You assert that "the record shows that telegraphers at SY office always have handled all types of communications, including run messages" and you further assert from that premise that we have not been factual in our statements in this case. Your assertions and conclusions are, however, unsupported by any evidence of probative value. The preponderance of the evidence in this record shows that "run messages" between the General office at Shreveport and other offices of the Carrier are handled exclusively during his regular work week by the Telegrapher at "CD" office.

With respect to Award 15328, you have made a number of unsupported assertions and reached similar unsupported conclusions with

respect to the principles enunciated by that Award. The language of the Award must speak for itself and it is clear to me from a reading of the Board findings in that case that the majority there gave clear recognition to the fact that the work of a position belongs to the occupant thereof on Holidays and the work on unassigned days rule is violated when such work is assigned to another employe whether or not such reassignment is in violation of the Scope Rule of the Agreement.

Your statements at top page 3 are patently erroneous with respect to claimant Moore being assigned to work on the day in question, and that he would not have received holiday pay had he not been assigned to work that day. Both these statements are denied as being contrary to the facts of record. Claimant Moore was not assigned to work on July 4, 1967 (he was instructed by the Carrier to not work on such day). Secondly, an employe is entitled to holiday pay provided he meets the qualifications spelled out in the Agreement irrespective of whether or not he is assigned to work on the Holiday.

You have cited at length from Award 9491 which is a denial award. Other, much later awards have reached a contrary conclusion. I would particularly direct your attention to Award 15375 where it was held that the work customarily performed on a position during the regular work week thereof should be performed by that position on holidays and its assignment to an employe of the same craft is in violation of the work on unassigned days rule.

There is no question but that the communications in evidence were messages of the type that would have been handled by the CD telegrapher during his regular work week and would have been handled by the claimant had he been on duty. Claimant was, therefore, entitled to this work on the unassigned holiday.

Your decision is not acceptable.

Very truly yours,

J. H. Abbott
J. H. Abbott

(f) AUTHORITIES RELIED ON

Third Division, National Railroad Adjustment Board, Awards:

7134	7136	14160	5810	15436
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CARRIERS' STATEMENT OF FACTS: Claimant Moore is regularly assigned as Telegrapher-Clerk at CD office (a one-shift office) Shreveport, Louisiana, 6:30 A. M. to 2:30 P. M., Saturday through Wednesday, rest days Thursday and Friday. Around-the-clock telegrapher service is maintained at SY office located about one mile from CD office.

On Tuesday, July 4, 1967 (a national holiday included in the Telegraphers' Agreement), Carrier blanked Moore's position. As the holiday fell on a work day of Moore's work week, he was compensated for eight hours at pro rata rate in accordance with Article 8-7 of the effective agreement.

Claim for an additional eight hours' pay at the time and one-half rate was presented on behalf of Moore by General Chairman C. A. Lewis, Jr., in letter dated August 18, 1967 (copy attached as Carrier's Exhibit 1), reading in part:

"STATEMENT OF FACTS: The Carrier on or about June 28, 1967 advised Mr. F. A. Moore not to fill his assignment in 'CD' Office, Shreveport, La., on July 4, 1967 due to legal holiday. The Carrier thus blanked this position and did not, in fact, blank the work allotted this position. The following messages were mailed to the Deramus Yard Office operator, C. A. Lewis, Jr. for transmission to the stations shown in each instance. This is work usually performed by the 'CD' operator, and in this particular instance, Mr. F. A. Moore. We do not dispute the Carriers' right to blank positions on Holidays, however, we most assuredly do dispute their right to blank these positions without abolishing all work connected therewith. Rule 8-7 and 8-8-n. are the governing Holiday rules here. While it does not read specifically that the work must also be abolished, this meaning is still crystal clear as pointed out numerous times by the Third Division of the National Railroad Adjustment Board." (Emphasis ours.)

In the instant case five messages were messengered to SY telegrapher C. A. Lewis, Jr., and transmitted. The Employees contend that these messages should have been transmitted by Claimant Moore. They further say that a position cannot be blanked on a holiday "without abolishing all work connected therewith." Finally, the Employees state:

"While it does not read specifically that the work must also be abolished, this meaning is still crystal clear as pointed out numerous times by the Third Division of the National Railroad Adjustment Board."

Thus the issue to be resolved by the Division in this case is:

In the absence of a specific prohibition in the effective agreement, must the Carrier abolish all work of a position in order to blank said position on a holiday?

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was regularly assigned as the one shift one Telegrapher-Clerk in "CD" office, Shreveport, Louisiana. His regular assigned workweek was Saturday through Wednesday; hours 6:30 A.M. to 2:30 P.M. His office was adjacent to that of the Chief Dispatcher in Carrier's office building which was alongside Deramus Yard.

Telegraphers were also employed in another office—"SY"—in Deramus Yard, around the clock, which across the tracks was about one mile from the office building in which "CD" was housed; by roads passable for automobile, about three miles distant.

Claimant was given due notice that his position would be blanked on the July 4, 1967 Holiday.

On August 18, 1967, Telegraphers filed a Claim in which, inter alia, it averred:

"The Carrier on or about June 28, 1967 advised Mr. F. A. Moore (Claimant) not to fill his assignment in 'CD' Office, Shreveport, La., on July 4, 1967 due to legal holiday. The Carrier thus blanked this position and did not, in fact, blank the work allotted this position. The following messages were mailed to the Deramus Yard Office Operator, C. A. Lewis, Jr. for transmission to the stations shown in each instance. This is work usually performed by the 'CD' operator, and in this particular instance, Mr. F. A. Moore. We do not dispute the Carriers' right to blank positions on Holidays, however, we most assuredly do dispute their right to blank these positions without abolishing all work connected therewith. Rule 8-7 and 8-8-n. are the governing Holiday rules here. While it does not read specifically that the work must also be abolished, this meaning is still crystal clear as pointed out numerous times by the Third Division of the National Railroad Adjustment Board." (Emphasis ours.)

and, further, stated its position:

"It is the position of the employees that the Carrier may blank any position on any holiday, provided, that it also blanks the work that is done by the occupant of that position.

We have not only alleged here that work was done by employees other than the occupant of the blanked position, we have proved it by providing the communications sent and even further, with the service marks bearing out our claim.

For the reasons above, the employees request that the claim of 8 hours at the penalty rate be allowed Mr. Moore."

From a reading of the record as a whole the logic of Telegraphers' case is:

1. Run Messages — instructions from the Chief Dispatcher to personnel in various terminals instructing them as to trains to be operated — was communications work "exclusively" (in some communications relative to the Claim, Telegraphers used the word "usually" instead of "exclusively") performed by Claimant during his tour of duty and, therefore, was work exclusively reserved to the Telegrapher-Clerk position at "CD";

2. On July 4, 1967, a Tuesday — a work day within Claimant's workweek regular assignment — five Run Messages were messengered from the Chief Dispatcher's Office to "SY" office to be transmitted by telegrapher on duty at that location during hours within a regularly assigned work day of Claimant's work week;

3. Telegraphers admit that the transmission of the Run Messages by telegraphers at "SY" did not violate the Scope Rule:

4. Citing ARTICLE 8, Compensation, Rules 8-7(a), Holidays; 8-7(m) Work on Unassigned Days; and, 8-7(n), Holiday Work; and 8-8(m) Work on Unassigned Days; and, 8-8(n) Holiday Work, Telegraphers reason that: (1) the work of transmitting Run Messages from the Chief Dispatcher at Shreveport was work "exclusively" reserved to the occupant of the "CD" position at that location and; (2) the transmission of the five Run Messages by telegraphers at "SY" on

July 4, 1967, referred to in (2), above, was in violation of the afore cited provisions of the Agreement; and, therefore Claimant had the contractual right to work his position on the Holiday to perform the work "exclusively" or "usually" performed by the occupant of his position during its regularly assigned hours; and, Claimant, therefore, is contractually entitled to 8 hours at time and one-half in addition to the 8 hours pay at pro rata rate for the holiday; and

5. " * * * when work belonging to the position of telegrapher CD was, on an unassigned day, performed by another regular employe, the Agreement was thereby breached." (Emphasis ours.)

It is Carrier's position that the averments of Agreement violations are not supported by the Rules or practice on the property and that the Claim should be denied. It admits that five Run Messages were transmitted by telegraphers at "SY" on July 4, 1967. It denies that in practice the transmission of such messages has been the exclusive work of the "CD" telegrapher.

The issue before us is whether under the Rules pertaining to Holidays Carrier may blank a position on a Holiday unless it blanks, on such a day, all the work "usually" performed by the occupant of the position.

In considering this issue we have looked to numerous awards concerning rules applying to work on holidays. These awards indicate that when work required on a holiday is exclusively assigned to the position affected, or the position is filled, the regular incumbent has a prior right to be used. But when a position is not filled and it is not shown that the work required is exclusively assigned to the position the regular incumbent has no such prior right. Awards 7134, 7137, 8198, 10602, 12189, 17428, 17842.

The Employes, in the record before us, have not proved that the only work required, the handling of five Run Messages, is exclusively assigned to the Claimant's position. The claim, therefore, will be denied.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.

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