Award No. 708
Docket No. TE-673

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway that telegrapher E. E. Shultis, San Bernardino, California be compensated for eight (8) hours at pro rata rate of his assigned position covering time lost April 8, 1937 to avoid violation of the Federal Hours of Service Law."

EMPLOYES' STATEMENT OF FACTS: "Agreement bearing date of February 5, 1924 and January 1, 1928 as to rules of working conditions and rates of pay, respectively, exists between parties to this dispute.

"Telegrapher E. E. Shultis, regularly assigned to a position in the San Bernardino, California relay office where office seniority is operative, had assigned hours 8:00 p. m. to 4:00 a. m. on April 7, 1937 and prior thereto.

"Effective 12:01 a. m. April 8, 1937 the Carrier reduced one position, rearranging the office hours of the remaining positions. As a result thereof Shultis was assigned office hours 2:00 p. m. to 10:00 p. m. and on this date (April 8th) worked only three (3) hours, 7:00 p. m. to 10:00 p. m. to avoid violation of the Federal Hours of Service Law and was paid for three hours at pro rata rate."

CARRIER'S STATEMENT OF FACTS: "Agreement bearing date of February 5, 1924 and January 1, 1928 as to rules of working conditions and rates of pay, respectively, exists between parties to this dispute.

"Prior to April 8, 1937, the telegrapher assignments in the relay telegraph office at San Bernardino were as follows:

No. 1	6 A.M. to 2 P.M.	A. E. Spinner
No. 2	8 A.M. to 4 P.M.	M. E. Hebert
No. 3	10 A.M. to 6 P.M.	W. F. Evans
No. 4	8 P.M. to 4 A.M.	E. E. Shultis

"Owing to decrease in business it became necessary to reduce the force in the San Bernardino relay office and pursuant to our practice of posting a bulletin for the information of all concerned at least 36 hours in advance of the change, a line-up was posted at 11:50 A.M., April 6, showing the hours of the assignments that would remain after 12:01 A.M., April 8, and which were as follows:

OPINION OF BOARD: The petitioner contends that the carrier in the action complained of in this dispute was a violation of Article 17 (a) of the agreement between the parties. This provides:

> "Regularly assigned employes will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location, except on Sundays and holidays."

The carrier, however, insists that it was justified in the action that it took by virtue of Article 17 (b). This provides:

> "This rule shall not apply in cases of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the company."

In the first place, the petitioner urges that the portion of the second part of Article 17 relating to reduction of forces has no application to regularly assigned employes; that the language referred to merely means that an employe forced on the extra list by a reduction of forces shall not receive the benefit of the guarantee included in the first paragraph of the rule. This contention, in the opinion of the Division, is not tenable. The parties negotiating this agreement would hardly have felt the necessity of stating the obvious. The language in question must have been incorporated into the agreement for a purpose.

In the second place, the petitioner urges that the portion of the rule relating to reduction in forces is limited by the phrase "not within the control of the company;" that the reduction of forces and the reassignment of employes are matters within the control of the carrier; and that, therefore, the exception has no application. In the opinion of the Division, the construction of the sentence clearly indicates that the statement "not within the control of the company" refers to traffic interruptions included in the second clause and not to the subject matter of the first clause. If the interpretation requested by the petitioner were approved, the portion of the rule in question would for all practical purposes be read out of the agreement between the parties. The Division is, therefore, of the opinion that a proper interpretation of Section 17 (b) excuses the carrier from responsibility for incidental losses caused to an employe by a reduction in forces. Whether the rule is fair or unfair is a question which the Division need not discuss.

In the third place, the petitioner urges that the Federal Hours of Service Act, not the reduction of forces, caused the monetary loss complained of, and that the intervention of the Hours of Service Act is not included in Article 17 (b) as an exception to Article 17 (a). The Division cannot agree with this contention. There is nothing in the agreement which prohibits the carrier from making reductions in forces, and it may be assumed that it will not take such action except as it is impelled to do so by adverse business conditions. While it is true that the intervention of the Hours of Service Act was one of the causes contributing to the loss in question, the Division is of the opinion that the reduction in forces was the proximate and responsible cause for claimant's loss.

The interpretation adopted in this award does not mean that the carrier is privileged to make reassignments following a reduction in forces in complete disregard of the rights of employes. It is assumed that in such a situation the carrier will do all that it can to protect the employes against unnecessary inconvenience and expense. The evidence of record in this dispute, however, does not indicate that the carrier acted arbitrarily or in disregard of the rights of the employes involved.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 carrier in taking the action complained of did not violate Article 17 (a) of the agreement between the parties.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1938.