Award No. 1875
Docket No. TE-1838

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ALTON RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Alton Railroad, that the Carrier is violating the second paragraph of Rule 3 of the Telegraphers' Agreement daily on week-days at the Rush Hill telegraph office by notifying the agent-operator at Rush Hill before released from duty for the day to perform service not continuous with his regular week-day assignment; that the agent-operator whose week-day assigned hours are 8:00 A. M. to 5:00 P. M., be paid continuous overtime on each week-day since February 26, 1941, on which he was notified before released for the day to perform service later in the day and not continuous with the regular week-day assignment; and that the senior extra telegrapher available on each of these days shall be paid a day's pay for each day the agent-operator at Rush Hill was thus notified before released for the day to perform work not continuous with his week-day assignment.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date February 16, 1929, as to rules of working conditions, and August 1, 1937, as to rates of pay, is in effect between the parties to this dispute.

The position of agent-operator at Rush Hill, Missouri, is covered by said agreement with assigned week-day hours 8:00 A. M. to 5:00 P. M., with an hour allowed for meals.

The second paragraph of Rule 3 of the Telegraphers' Agreement provides as follows:

> "Employes notified or called to perform work after being released will be allowed a minimum of three hours for two hours work or less and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis."

Effective February 26, 1941, the Carrier has, daily on week-days, notified the agent-operator at Rush Hill before released to perform work later in the day not continuous with the assigned week-day hours. For this service the agent-operator has been paid in the same manner he would have been paid if notified after being released to perform such work.

CARRIER'S STATEMENT OF FACTS: The agent at Rush Hill, Missouri, during the period involved was regularly assigned from 8:00 A. M. to 5:00 P. M., with one hour off for lunch. This was then and is now the only telegraph service maintained at that station.

About six miles west of Rush Hill a spur track leads from the main line to the plant of the Mexico Refractories Company, a distance of about three

while being allegedly based on a presumed violation of this rule, sets up the fiction that the frequent calling of the agent for work not continuous with his regular assignment constituted establishment of a second assignment at this station. In this manner they attempt to justify not only a claim for continuous time for the agent, who actually performed the work, but also a claim for the senior extra telegrapher available on each day that this work was performed. Since by the first paragraph of the rule time in excess of eight hours is considered as overtime, it can not at the same time be considered as a new assignment. Therefore, as the work does not constitute a new assignment, the claim for the extra telegrapher available is clearly without support as there is no rule in the agreement entitling extra men to work in place of regular men, either working overtime or answering calls. Your Board has in fact held in its "Opinion" in Award No. 896 that similar rules "do not prohibit the Carrier from working employes more than eight hours per day."

The Carrier has shown that the claim of the Employes is without support in either the rules or past practices. It is completely without merit and should be denied.

OPINION OF BOARD: From a reading of the foregoing statements of fact and positions of the respective parties it is clear that this dispute narrows down to the proposition that the Carrier may not "notify or call" an agent **before** he goes off duty, to perform work thereafter without paying such agent time and one-half continuously from the time his eight hours are up until finally released for the day. Carrier says nothing in Rule 3 limits the calling or notifying to "before" leaving.

As has been so forcefully stated by both sides to this controversy it all hinges on the interpretation of the second paragraph of Rule 3, which we quote later.

Employes admit that if the rule is subject to more than one interpretation recourse may be had to the practice or custom extant at the time and subsequent to the adoption of the rule as indicating the intentions of the parties, and they grant that Award No. 1246, which they cite, and the Carrier also cites, is authority for such statement.

No better evidence is needed of the susceptibility of the second paragraph of Rule 3 to two interpretations than the sharp contentions made here by each side for its respective interpretation, and the author of this opinion is frank to admit that it has not been an easy matter to decide. But since it is our duty to pass on the meaning of words, phrases, and sentences as we find them and not what they might mean if transposed, we have proceeded on that basis.

As indicative of the meaning contended for by the Carrier, the Carrier submits Bulletin No. 4038 which shows that eight agents on the Western Division were assigned daily calls outside their regular hours and were paid on the basis that the agent at Rush Hill was paid. This was four years after the 1922 Agreement, with which we are concerned. In addition Carrier submits the affidavits of two of its dispatchers showing that the custom has been followed for years. The Employes do not deny the fact of this nor have they ever so far as this record shows challenged these assignments, but they claim this evidence is not properly in the record because not previously submitted to the Employes. However we think it fair to say that this part of the record is here, because the Board requested the Carrier to submit examples of operation under the agreement that might touch on the rule.

Employes also admit that under this same rule as promulgated by the Director General of Railroads under Federal control, that the Carrier would have the right to do just what it did in this case. As already pointed out in the Statement of Facts the rule then read "When notified or called to work outside of established hours, employes will be paid a minimum allowance of two hours at overtime rate," and as it now reads "Employes notified or called

to perform work after being released will be allowed a minimum of three (3) hours for two (2) hours work or less etc." We must agree with the Carrier that the purpose of the change was to remove an ambiguity in relationship to work not continuous with the regular assignment, since the words "outside of established hours" could be construed to mean continuous with the regular assignment. This ambiguity was removed by substituting the words "after being released" which obviously interrupts the continuity.

The Employes further admit, in their grammatical analysis of the paragraph, that before the contention they make becomes obvious it is necessary to transpose the phrase "after being released" from the place where it now unquestionably modifies "work" to the place following the words "notified or called." We must conclude that resort to this highly technical grammatical analysis shows that the words as written do not mean what the Employes contend.

Finally, the Employes seek to justify their contention by saying that the evening social life of the agent was completely disrupted by being notified before he went home that he would have to come back in the evening. We believe there is merit in Carrier's answer to this that his social life would be much more disrupted if he was not notified until he was right in the midst of some social engagement which might well be the case if he were "notified or called" after leaving his post.

Much more could be said, but enough has been said to indicate that the Employes did not sustain their position and the claim should be denied.

Candor demands however that we say the Carrier has taken advantage of this situation. While the rule does not limit the number of days a man may be called, it is difficult for this referee to believe that it was contemplated to permit the situation which is the subject of this dispute. To the end that a better understanding be reached on the subject, it is recommended that further negotiations be had on Rule 3 in line with the suggestion of the Employes that "When it was found that a rule did not cover or was not sufficient to take care of an existing condition, an attempt was made to revise the rule and make it applicable to such a condition."

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 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 Carrier has not violated Rule 3 and the claim should be denied. Recommended that further negotiation be had on the rule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1942.