

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LOUISIANA AND ARKANSAS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Louisiana and Arkansas Railway Company, that F. L. Hosea, regularly assigned first trick telegrapher in the Chief Dispatcher's office, Shreveport, Louisiana, whose regular assigned rest day is on Tuesday of each week, shall be paid at time and one-half rate under the provisions of Section 1-(a), (b) and (i) of the Rest Day Rule of the Telegraphers' Agreement mutually adopted and effective March 1, 1945, for each rest day commencing August 27, 1946, on which the Carrier has, in violation of the Telegraphers' Agreement, improperly relieved him on such rest days by the use of a regularly assigned swing train dispatcher, an employee not under the Telegraphers' Agreement.

JOINT STATEMENT OF FACTS: An agreement bearing date July 1, 1942, as to rates of pay and rules of working conditions, including the Rest Day Rule effective March 1, 1945, is in effect between the parties to this dispute.

Claimant F. L. Hosea is regularly assigned to the first trick telegrapher position in the dispatcher's office at Shreveport, Louisiana, and the position is a seven day position. No rest day under the provisions of the Rest Day Rule effective March 1, 1945, was assigned for this position prior to August 27, 1946.

Effective August 27, 1946, the Carrier designated Tuesday of each week as Claimant Hosea's regular rest day, and assigned F. J. Fava to relieve Claimant Hosea on his assigned Tuesday rest day in each week and has continued this practice since that date.

The correspondence exchanged between the parties hereto, in handling this matter on the property, is attached hereto as Exhibits A to R, inclusive.

The schedule rules relied on by Organization are set forth on Exhibit S.

The rest day rules are set forth on Exhibit T.

POSITION OF EMPLOYEES: It is the position of the Committee that work under one agreement may not be taken away from employees thereunder and assigned to employees not covered thereby.

The Scope Rule of the telegraphers' agreement (Exhibit S) effective July 1, 1942, covers "telegraphers" and the position in question is listed in the wage scale thereof.

subject to the rules herein set forth with respect to pay for work performed on such rest days."

Here, the intent of the agreement is specifically set forth, namely, that **employees will be relieved where practicable**; but it goes on to give the carriers the right to **require a man to work** on his rest days provided he is paid therefor in accordance with the other rules of the Rest Day Agreement. This means, of course, that if the Carrier **requires** him to work on his rest day he will be paid therefor at the rate of time and one-half. How it can be interpreted to mean that the employee can **require the Carrier** to use him, is not apparent.

Reading this Rest Day Agreement in its entirety one cannot escape the conviction that the sole purpose thereof was to afford one day of rest each week to these employees, but that they could be **required** to work on the seventh day if it is not **practicable** to relieve them.

Now, here is a situation in which we have Fava, a fully qualified man, holding seniority as a telegrapher, working three days a week as an extra dispatcher, right in the same office with Hosea, and we are told that because we are using him to relieve Hosea on the seventh day we are perpetrating "a scheme to relieve telegrapher Hosea one day each week to escape the overtime penalty under our Rest Day Rules". (See General Chairman Ward's letter December 27, 1946, Exhibit F.) Such an expression would lead one to believe that the intent of the Rest Day Agreement is incorrectly stated in the Agreement itself, and that the principal intent was to gain the advantage of additional compensation (the time and one-half rate) for the employees for working the seventh day.

There is no disposition on the part of the Carrier to violate the scope rule of the Telegraphers' agreement, as suggested by Mr. Ward in that same letter, neither have we in mind any "scheme" or plan to use a Trainmaster, a Chief Dispatcher, a General Agent, a Rules Examiner, or other such monthly rated employe to do the work that is ordinarily done by a telegrapher. We do contend, however, that in the situation here at issue, a practicable means of relieving Hosea is being utilized, in an attempt to afford him the one day of rest each week to which he is entitled under the avowed spirit and intent of the Rest Day Agreement and that this is being accomplished without taking from anyone any rights he may have or any compensation to which he may be entitled under the provisions of any Agreement. Certainly, Hosea has a right under the Rest Day Agreement to expect a rest day each week if practicable for us to afford it. We contend that this right on his part supersedes any right he may have had prior to the execution of that Agreement, to demand that he be employed on this position seven days a week. Such a demand on his part simply does not synchronize with the mandatory provisions of the Rest Day Agreement. If we actually **required** him to work on the seventh day, he would, of course, be entitled to pay therefor at the rate of time and one-half. Having found a practicable way to relieve him and thus to carry out the provisions of the Rest Day Agreement, his claim for pay for the time put in by Fava on the seventh day is, to say the least, inconsistent, and in our opinion is unsustainable.

Considering the facts in the case we contend there has been no violation of the Telegraphers' Schedule as amended by the Rest Day Agreement, and respectfully ask that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: It is agreed by the parties that the Claimant, F. L. Hosea, is regularly assigned to the first trick telegrapher position in the Chief Dispatcher's Office at Shreveport, Louisiana; that this position is a seven-day position; that effective August 27, 1946, the Carrier designated Tuesday of each week as Claimant's rest day, and assigned F. J. Fava, to relieve Claimant on such rest day; that Fava has continued to relieve Claimant on Tuesdays since said date; that during this period there have been no extra telegraphers available; that Fava on June 1, 1944, was promoted from telegrapher to dispatcher to relieve three trick dispatchers and the assistant chief dispatcher on their days off which under the Dispatchers' Agreement constituted a regular relief assignment; that on May 8, 1946, a change in the Assistant Chief Dispatcher position left Fava only three trick

dispatchers to relieve which, pursuant to Dispatchers' Agreement, made Fava an "extra dispatcher" instead of a "regular relief dispatcher"; and that since May 8, 1946, Fava has continued to regularly relieve the three trick dispatchers for the three days each week and has regularly done clerical work two days each week assisting the Assistant Chief Dispatcher.

The parties also agree that since no extra telegrapher was available during this period, the Claimant was entitled to work on his relief days at time and one-half if Carrier improperly used Fava to fill said telegrapher position on said days.

Our sole question then is to determine whether the Carrier could properly use Fava to fill Claimant's telegrapher position on Claimant's rest day.

Carrier's principal contention is that since Fava, under the provisions of Rule 2-6 of the Telegraphers' Agreement, retained his seniority as a telegrapher, and since said Rule 2-6 expressly provided that a telegrapher should retain rights to his telegrapher position for a period of six months after being promoted to a train dispatcher position, the Carrier should be entitled to use him to relieve Claimant on Claimant's rest day.

It seems clear that a telegrapher promoted to a train dispatcher position retains his seniority as a telegrapher only for the purpose of assuring him a telegrapher position in the event of his being forced out of a train dispatcher position; that for a period of only six months after his promotion he retains rights to his last telegrapher position; and that he then passes out of the coverage of the Telegraphers' Agreement.

The fact that his rights to his telegrapher position are expressly protected for six months while he is new as a dispatcher negatives the idea of any implied protection thereafter.

Award No. 3735 does not support the Carrier in this case. That award dealt only with apportioning the work of a position not under the agreement between the one holding the position and his assistant who was covered by the agreement. That award recognized the principle that work covered by an agreement "may not be removed therefrom by unilateral action of the Carrier and given or assigned to others excepted from or not covered by the agreement".

It is admitted that the work done by Fava was work covered by the Telegraphers' Agreement. It is clear that Fava was not covered by the Agreement.

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 parties waived oral hearing thereon;

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 Carrier violated the Agreement by using Fava to relieve Claimant on Claimant's rest day.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of January, 1948.