

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad that positions of Telegrapher, first and second tricks, "DOCK" Tower, Newark, N. J., assigned to work seven (7) days per week with Monday and Friday as assigned relief days respectively and worked by Relief Schedule No. 7-A, have been blanked each Sunday since April 27, 1947 and the work absorbed and performed by the Block Operators on first and second tricks in this Tower.

Further claim, that first and second trick Telegrapher positions shall be reestablished to Relief Schedule No. 7-A, and all employees compensated for such loss in earnings suffered.

EMPLOYEES' STATEMENT OF FACTS: The Wage Scale of the Telegraphers' Agreement, New York Division, contain the following positions and rates of pay in "DOCK" Tower, Newark, N. J.:

LOCATION	TRICK	POSITION	HOURLY RATE
Dock	1st, 2nd & 3rd	Block Operator	\$1.425
Dock	1st, 2nd & 3rd	Telegrapher	1.315
Dock	1st, 2nd & 3rd	Leverman	1.315

These positions were scheduled to work seven (7) days per week, the seventh day for each regular incumbent being covered by and included in a regular Relief Schedule bid in and owned by a regular employee, as his regular assignment.

Effective Sunday, April 27, 1947, the assigned relief day for first and second trick Telegraphers' positions, Dock Interlocking Station, were changed from Monday and Friday, respectively, to Sunday and the Relief Schedule representing the above positions on the assigned relief days prior to April 27, 1947, was abolished, and a new Relief Schedule established instead.

Thereafter, the Telegrapher positions on first and second tricks, Dock Interlocking Station were not filled on Sundays, the second trick Telegrapher position was filled each Sunday from April 27 to August 31, 1947 by extra forces and again filled by extra force employee on Sunday, November 30, 1947.

The work of the Telegrapher positions on first and second trick Dock Interlocking Station, has been absorbed by the Block Operators in this Office since April 27th, 1947, except for the days filled by extra force employees.

There has not been a reduction in traffic at this point that would warrant the elimination of these positions on Sundays.

It is, therefore, respectfully submitted that the arrangement placed in effect at Dock Interlocking Station, as described above, is proper under the Agreement and the contention of the Employees should be denied.

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is Required to Give Effect to the Said Agreement and to Decide the Present Dispute in Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement, which constitutes the applicable Agreement between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the Power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that under the specific terms of the Agreement the action of the Carrier in re-arranging the relief days of the first and second trick telegraphers at Dock, and establishing them as six-day positions, was proper and that the claim should be dismissed.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves the first and second trick telegraphers' positions at "DOCK" Interlocking Tower at Newark, New Jersey, the third trick telegrapher's position having been previously abolished. Prior to April 27, 1947, the first and second trick telegraphers' positions were seven day a week positions, with Monday and Friday, respectively, the relief days. A relief position was assigned, the occupant thereof performing the work of the first and second trick operators on Monday and Friday. On April 27, 1947, the relief day of each of these two positions was changed to Sunday. No regularly assigned relief man was given the Sunday work of these two telegrapher positions.

In addition to the two telegrapher positions at "DOCK", there was a block operator position and a leverman's position, both of which operated around the clock. The Sunday work of the two telegrapher positions was absorbed by the block operators except for a short time when it was performed by extra forces. The block operator positions are also within the Telegraphers' Agreement. It is the contention of the Organization that the relief day work could not be removed properly from the first and second trick operators' positions and be assigned to the block operators to perform.

The change of the relief days by the Carrier is in accord with the Agreement. We think, also that if the Sunday work of a seven day a week position necessary to the continuous operation of the Carrier ceased to exist for any reason, the Carrier could properly change it to a six day position and abolish the Sunday relief position. The question here involved is whether this may be done when Sunday work continues and is performed by other employees under the Agreement.

It is a fundamental rule, we think, that seven day positions necessary to the continuous operation of the Carrier must be assigned seven days per

week, unless a specific provision of the Agreement authorizes a contrary course. If the record shows, therefore, that the first and second trick telegraphers' positions were such when the relief position was abolished, it constitutes a violation of the Agreement.

Were the telegrapher positions seven day positions at the time and following the abolishment of the regularly assigned relief position? The record discloses that telegrapher work continued after that time. It shows that such work was performed by the first and second trick block operators. There is evidence in the record that traffic increased rather than decreased following the abolishing of the regularly assigned relief position. There is no evidence of any change of conditions that would eliminate the Sunday work of the telegrapher positions. Under these circumstances the seven day position cannot be properly changed to a six day position, nor may the relief days of the seven day position be removed from a regularly assigned relief position. A rearrangement of the work of the station can be had, under such circumstances, only by negotiation with the Telegraphers' Organization. The abolishing of the assignment of the relief days of the two telegrapher positions to a regularly relief position was, therefore, a violation of the Agreement. Consequently, the first and second trick telegraphers' positions are seven day positions and the relief days of such positions must be filled by a regularly assigned relief position (not necessarily Relief Schedule No. 7-A).

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 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

An affirmative award is required.

AWARD

Claim sustained except as limited by the last sentence of the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1949.