

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis Southwestern Railway Lines,

(a) That the Carrier violated the scope and other rules of the Telegraphers' Agreement during the absence of the regularly assigned agent at Malden, Missouri, on January 12, 13 and 14, 1948, and on April 12, 13, 14, 15, 16, 17 and 24, 1948, when it failed or refused to fill this position by an employee from the telegraphers' seniority roster, and required or permitted an employee not under the Telegraphers' Agreement to perform the duties of the agent on these days; and

(b) That all employees covered by the Telegraphers' Agreement who had acquired seniority to this work, and who, by reason of this violative act of the Carrier suffered a loss in the earnings they would have received had the agreement not been violated in this manner, shall now be reimbursed and made whole just as they would have been had the agreement been complied with.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement bearing date of December 1, 1934, as to rates of pay and rules of working conditions, in effect between the parties to this dispute. Rates of pay have been increased and Article 16 has been revised subsequent to the effective date of the agreement.

The following hourly rated employees, and assigned hours, under the Telegraphers' Agreement are employed at Malden, Missouri:

Agent	7:00 A.M. to 4:00 P.M.	Daily except Sundays and holidays
Telegrapher	7:55 A.M. to 3:55 P.M.	Daily with Sunday as rest day
Telegrapher	3:55 P.M. to 11:55 P.M.	Daily with Wednesday as rest day
Telegrapher	11:55 P.M. to 7:55 A.M.	Daily with Thursday as rest day

There is also an assigned rest day relief telegrapher working between Malden and Dexter Junction, Missouri, with headquarters at Malden, as follows:

"You had a regularly assigned rest day relief employe working between Malden and Dexter Jct., whose assignment on Sunday January 11 was first trick clerk-telegrapher position at Malden. It would have been a very easy matter to have notified him to continue working that position during the absence of Agent Cooper, used the first trick clerk-telegrapher (Chrisman) to relieve the agent, and instructed the other employes involved to work their rest days, and there would have been no detriment to the service."

This would have resulted in five employes working on positions or on days they were not assigned to work.

The relief telegrapher cited has a regular assignment under Article 13-1 the same as other regularly assigned employes, and has the right to work on it unless the service requirements necessitate that he be removed for other work under Article 16. He does not have the right to vacate it and work some other position.

There has been a shortage of telegraphers since beginning of the war in 1941, and it has been difficult to fill the need for such employes. In the present case, no extra telegrapher was available. Had a telegrapher regularly assigned to some other position been used it would have been necessary that he vacate his assigned position. While this could have been required by the Carrier to meet the needs of the service, it was necessarily an operating decision and not a proper matter for agreement between the Organization and the Carrier.

As pointed out above, there is no agreement specifying under what conditions a regularly assigned employe will be used for relief work, nor what employe will be used. The rules merely provide payment that will be made in event this is necessary.

Therefore, the fact is clear that the claim is not supported by any rule and is not justified for any reason. Consequently, the Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Agent at Malden, Missouri, was absent on the dates mentioned in the claim. Employes assert that Carrier violated the Scope and other rules of the 'Telegraphers' Agreement when it failed or refused to fill the position by an employe from the Telegraphers' seniority roster and required or permitted an employe not under the Telegraphers' Agreement to perform the duties of the Agent on the said days.

In the record there appears a contention by the Employes that Carrier violated the Agreement by blanking the position of the Agent on the days set forth in the claim. The Agent's position was not a seven-day position necessary to the continuous operation of the Carrier, but was a six-day position with Sundays off. We think that it is quite clear from many Awards of this Board with which we agree that the blanking of six-day positions, because of the absence of the regularly assigned employe, in the absence of specific limitations in Agreements, is not in itself a violation of guarantee provisions. As a matter of fact, that point was not raised on the argument. The issue presented in this case is whether or not the Carrier has violated the Scope Rule. In this connection Employes assert that the work of the Agent's position was performed by the Cashier, an employe under the Clerks' Agreement. Carrier, on the other hand, asserts that the Cashier did no work other than what he would have done had the Agent been there during the time and that the Agent's work was permitted to accumulate and was brought up to date on his return.

To resolve the conflicting issue of fact indicated in the previous paragraph we refer to the record. Employes quote a letter from the telegrapher whose hours of work corresponded very closely to those of both the Cashier and the Agent, which reads as follows:

Mr. C. M. Fitzhugh
General Chairman
Texarkana, Texas.

"Malden, Missouri
April 25, 1948

Dear Sir and Brother:

In reply to your letter dated April 17, will advise that during the three days January 12, 13 and 14, that agent Cooper was off the work was performed by cashier Jack Kinder.

Now, agent Cooper was off week before last, that is he left for the Hospital at Texarkana on No. 5 April 11th and returned on No. 6 April 18th. On Saturday April 10th he asked Mr. Gibbons about being off as he wanted to go to the Hospital and Mr. Gibbons told him he did not have any extra men, but would see if he could find one and agent Cooper told him it would not be necessary to send a relief man as the cashier could handle the work as he had done it before, then he was off yesterday April 24th, the cashier handling the work both times.

/s/ G. W. Chrisman,
1st trick telegrapher."

Carrier states with respect to this letter:

"As to the statement of Telegrapher Chrisman that the cashier 'performed' the work. The cashier is, of course, the man at the point most familiar with the general station work, is bonded and when the agent is out of the office for any reason, he takes the lead. But this is one of the conditions of his position upon which his rate of pay is based, and in so doing he is not filling the place of the agent nor performing work of the agent."

The record further reveals that there are eleven employes under the Agent's supervision at Malden. Some of these employes are covered by the Telegraphers' Agreement and others by the Clerical Agreement. Most of them have assigned hours which overlap to some extent the regularly assigned hours of the Agent's position. It is a justifiable and reasonable conclusion that if the Agent were off duty for a day, and certainly all the more so if for a period in excess of a day, that the task of supervising these employes devolved upon someone. If the Cashier took the lead, as indicated by Carrier, it is fair to assume that he exercised that supervision to some extent. Performing some lead work while the Agent is absent from the station for a half-hour or an hour during his regularly assigned hours is much different than undertaking such responsibilities for a day or three days at a time. We think that the evidence in the record and inferences reasonably to be drawn therefrom preponderately indicates that work of the Agent was performed by the Cashier and that, therefore, the Scope Rule of the Agreement was violated. Hence Claim (a) must be sustained insofar as it asserts a Scope Rule violation.

With respect to the monetary Award it is no bar that specific claimants are not named. That part of the claim will be sustained on behalf of employes under the Telegraphers' Agreement who can establish that they were deprived of compensation by reason of Carrier having violated the Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim sustained to extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of July, 1949.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 4482

Docket No. TE-4286

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas.

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

This request for interpretation arises out of a difference of opinion between the Carrier and the Employees with respect to the effect to be given that part of the Award covering compensation. In the Award we upheld the contention of the Employees that the Scope Rule was violated by assignment of work on the days mentioned in the claim to employees outside of the scope of the Agreement. We said in the Award:

"With respect to the monetary Award it is no bar that specific claimants are not named. That part of the claim will be sustained on behalf of employees under the Telegraphers' Agreement who can establish that they were deprived of compensation by reason of Carrier having violated the Agreement."

The essence of the claim was a violation of the scope of the Agreement and we found such violation. The penalty is the important thing in order to require the Carrier to see to it that the Agreement is complied with. Claim on behalf of a particular individual is merely incidental. In a case such as this the penalty could only be a minimum of one day's pay for each day the violation continued. Therefore under the Award payment of one day's pay at the Agent's rate for each day of the violation should be made to the employe or employees under the Agreement nominated by the Organization as being entitled thereto on the days mentioned in the claim. In this, Carrier will be fully protected against any other claimants for it cannot be required to pay twice on the same claim.

Referee Francis J. Robertson, who sat with the Division as a member when Award 4482 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of January, 1950.

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