

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD, BUFFALO AND EAST

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East, that

(a) the Carrier violated provisions of the Telegraphers' Agreement, which bears an effective date of July 1, 1948, when and because it denied to Agent F. E. Coles and Assistant Agent F. R. Oexle, regularly assigned at Ludlow, New York, the right to perform overtime or "call" service at Ludlow, on Sunday, October 31, 1948, and

(b) the Carrier shall now be required to pay to each Agent Coles and Assistant Agent Oexle eight hours at time and one-half rate for Sunday, October 31, 1948.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of July 1, 1948 is in effect between the parties to this dispute.

Mr. F. E. Coles is the regular incumbent of the position of Agent at Ludlow, New York with the hours of 6:00 A. M. to 2:00 P. M. Mr. F. R. Oexle is the regular incumbent of the Assistant Agent position at Ludlow, New York with the hours of 2:00 P. M. to 10:00 P. M. Each position became a six day assignment with Sunday as rest day commencing July 1, 1948. The station was ordered closed each Sunday and the incumbents of each position were subject to the overtime and "call" service provisions of the Telegraphers' Agreement each Sunday.

On Sunday, October 31, 1948, the Carrier ordered Ludlow Station open which necessitated the working of both of the positions held by the Claimants. Instead of calling Agent Coles and Assistant Agent Oexle out to work their respective positions at Ludlow, the Carrier used two employees not holding regular assignments. These extra employees performed identical work normally and regularly performed by the claimants. The Carrier not only denied work properly belonging to these regular employees, but also denied payment of the claim.

POSITION OF EMPLOYES: As indicated in the Employees' Statement of Facts, Ludlow Station is regularly open from 6:00 A. M. to 10:00 P. M. Monday through Saturday, being closed each Sunday by orders of the Carrier. Mr. F. E. Coles, the regular incumbent of the agent position, is on duty daily except Sunday from 6:00 A. M. to 2:00 P. M. Mr. F. R. Oexle, the regular incumbent of the Assistant Agent position, is on duty from 2:00

Award No. 2706

"Claimant J. W. Smith was the regularly assigned occupant of the position of Yard Clerk at Dyersburg, Tennessee, a seven-day position with Thursday off as a day of rest. Claimant H. S. Newman was the regularly assigned occupant of the position of Yard Clerk at the same point, it being a seven-day position with Friday off as a day of rest. Prior to February 11, 1943, these two claimants had been working the full seven days each week and receiving time and one-half for the seventh day. On February 11, 1943, a Thursday, Smith was not permitted to work and the position was filled on that day by I. F. Campbell, a switchman with seniority as a yardman. On February 12, 1943, a Friday, Newman was not permitted to work and the position was filled on that day by Campbell. Claimants contend that this was a violation of the current agreement. The Carrier argues that Campbell was a new employee in working as a clerk with seniority as of the date his pay as a clerk started, to wit, February 11, 1943, and that he had a right to the work superior to that of the occupants of the regularly assigned positions.

The work in question belonged to the Clerks. **There were no furloughed or extra men available.** The claimants were not entitled to the work as a matter of right. Award 2618. If Campbell was entitled to work as a clerk, he could properly do the work in preference to Smith and Newman. If Campbell had no rights as a clerk, then Smith and Newman should have been called. The question resolves itself into one as to whether Campbell was entitled to perform clerk's work on the days in question." (Emphasis added.)

In all of the cases covered by the above mentioned awards, there were no extra men available who could be used to perform service on the rest day of regular six-day-week assigned employees and the Carrier used other than the regular incumbents of the positions on the rest day. The Board ruled that in the absence of available furloughed or extra men the regular incumbent should have been called to work his relief day and the claims of the employees were sustained.

Here, extra men were available and were used.

CONCLUSION

The evidence presented by the Carrier conclusively shows that the use of extra telegraph service employees for the extra work at Ludlow on Sunday, October 31, 1948 was not in violation of Section 2 of Article 11 or any other rule of the Telegraphers' Agreement and the claim of the Employees must be denied.

OPINION OF BOARD: Claimant Coles occupies the position of Agent at Ludlow, New York, assigned 6:00 A. M. to 2:00 P. M. Claimant Oexle occupies the position of Assistant Agent at the same point with assigned hours of 2:00 P. M. to 10:00 P. M. Each position was assigned six days a week with Sunday as rest day. The station was closed on Sundays. On Sunday, October 31, 1948, Carrier called two employees not holding regular assignments to work these two positions. Claimants contend that they should have been called and paid at the time and one-half rate.

The Sunday work here involved belonged to the Telegraphers. Claimants had a six day assignment and it is clear that they were not entitled to the work unless there were no furloughed or extra men available. They were entitled to perform the work in preference to an employee under some other Agreement, but they have no primary right to it. Awards 2618, 2706.

The Organization contends that Article II, Section 2, current Agreement, has the effect of assigning the Sunday work here involved to these Claimants. Such is not the case. It simply provides that if employees within the

classification under consideration are required to work on Sunday, they shall be paid in the manner therein stated. But it does not assign Sunday work to the occupants of the positions assigned six days with a Sunday rest day. We feel obliged to again point out that the motivating reason for the rest day rule was to afford one day of rest each week to employees. A penalty rate for working an employe on his rest day was established to coerce compliance with the rule. The intent of this rule and the objective sought by it should be carried out whenever possible. We think the spirit of the rule as well as the letter of it, requires the Carrier to use extra employes in preference to the occupants of the regularly assigned positions under the Agreement for rest day work when they are available, and thereby afford the occupants of six day positions the day of rest contemplated by the Agreement.

The Organization contends that it has been the practice of this Carrier to assign rest day work on positions described in Section 2 to the regular occupants of the six day positions. The Carrier states just as positively that the practice has been to use extra men under situations such as we have here. It may be that regular employes have been used most often because of the non-availability of qualified extra or furloughed employes. In any event, the rule is clear and definite. Even if the rule was subject to construction, there is no practice established by the record that could give it any different effect.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of March, 1950.