

Award No. 5468
Docket No. TE-5516

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of The General Committee of The Order of Railroad Telegraphers on The Chicago, St. Paul, Minneapolis and Omaha that:

1. The Carrier violated the terms of the Agreement between the parties to this dispute when on December 26, 1949, a holiday, and on January 2, 1950, a holiday, the regular assigned occupant of a telegraph position at Eau Claire, Wisconsin, assigned hours 6:30 A.M. to 2:30 P.M. was not used and the work of that position transferred to employees of the Carrier, Train Dispatchers, and

2. The occupants of the position referred to in paragraph 1 shall be compensated by the Carrier for eight hours at the time and one-half rate for December 26, 1949, and January 2, 1950.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties dated August 1, 1944, amended as to Rules and Rates of pay by the Chicago Agreement of March 19, 1949, and by a memorandum agreement effective September 1, 1949, signed at Chicago, Illinois, October 27, 1950.

The Claimant was regularly assigned 1st trick telegrapher in the Dispatcher's Office 6:30 A.M. to 2:30 P.M. He was not permitted to work these hours on December 26, 1949, a holiday, and on January 2, 1950, a holiday, the work accruing to the position and normally performed by him on other days being transferred to Train Dispatchers, employees outside the Scope of the Agreement between the parties.

The Claimant filed time slip for eight (8) hours at the overtime rate for December 26, stating:

"Claim this time account my regular job abolished 26th to avoid paying penalty time. Wire work shifted to trick Dispatcher and Chief Dispatcher. Train 72 cleared with register check and clearance by Sup. J. L. Walton handed to train passing depot. 103's order delivered by Dispr."

Also filed time slip for eight (8) hours at the overtime rate for January 2, 1950, stating:

OPINION OF BOARD: Claimant was regularly assigned as first trick telegrapher, 6:30 A. M. to 2:30 P. M., in the Dispatcher's Office at Eau Claire, Wisconsin. Holidays were excluded from the regular assignment. The claim is based on the failure of the Carrier to use claimant on December 26, 1949, and January 2, 1950, holidays under the provisions of the applicable rules. It is the contention of the claimant that work performed by him during the regularly assigned hours of his assignment was improperly assigned to train dispatchers on the two holidays which work, he contends, was telegrapher's work that belonged to him.

We are familiar with the general rule that a carrier ordinarily cannot properly assign the work of one craft to the employes of another without penalty. The instant case, however, raised a question that does not appear to have been involved in the awards cited in support of the claim. In other words, can a regularly assigned train dispatcher perform work ordinarily performed by a telegrapher on a holiday or other day outside the telegrapher's assignment? We concede at the outset that if it was necessary to use an additional employe for the holiday work that a telegrapher should be called. The question for determination is whether a train dispatcher may properly perform such work on a holiday incidental to his own assigned duties on such days.

The work performed by the train dispatcher alleged in the claim to belong to claimant as the occupant of the first trick telegrapher's position had to do with the clearances of trains at Eau Claire. The evidence describes additional work such as the obtaining of weather reports, morning reports, train consists and reports on train movements. The Carrier asserts that this is work which a train dispatcher may properly perform and that train dispatchers have performed this work for more than thirty years on this Carrier. The record does not establish that the work performed by the dispatchers on the two holidays involved belonged exclusively to the telegraphers. We think it was incidental to or a part of the work usually performed by train dispatchers. Award 4922 sustains this view. The claim must fail for want of sufficient proof that the work in question has been contracted exclusively to the telegraphers.

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 Employee involved in this dispute are respectively Carrier and Employee 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 a violation of the Agreement is not established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of September, 1951.