Award No. 5629
Docket No. TE-5635

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, 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 on Saturdays, November 12 and 19, 1949, it was necessary to have an Agent on duty at Martins Creek, N. J., and that Mr. R. F. Dalrymple, clerk, Phillipsburg, N. J. who had performed 40 hours work those weeks was used in agent's capacity at Martins Creek.

Request is made that the Agent involved shall be paid for the two dates and any other Saturday he time-slipped account being available and not used.

EMPLOYES' STATEMENT OF FACT: Martins Creek, N. J., is an agency position on the New York Division, rate of pay $296.39 per month. The work week of the incumbent Agent, Mr. W. J. Brittain, beginning on Monday through Friday.

R. F. Dalrymple is regularly assigned as a clerk, Phillipsburg, N. J., Freight Station, rate of pay $271.17 per month; work week beginning Monday. Mr. Dalrymple's name appears on the Substitute Agents' List, New York Division, rank No. 3, date February 26, 1943.

On the dates involved in this claim, November 12th and 19th, 1949, and succeeding Saturdays, Mr. Dalrymple was used as a substitute Agent at Martins Creek, being paid the pro rata daily rate of the Agent's position.

Mr. Dalrymple had already performed 40 hours of clerk service at Phillipsburg, N. J., his regular assignment.

POSITION OF EMPLOYES: There is an Agreement in effect between the parties, Rules and Rates of pay effective September 1, 1949.

Martins Creek, an Agency station on the New York Division, rate of pay $296.39 per month, is owned and worked by Mr. W. J. Brittain. This Agency station is shown in the Wage Scale of the Telegraphers' Agreement.

Effective September 1, 1949, Regulations were negotiated between the parties by revision of Agreement, whereby all positions were placed upon a 40-hour work week or 5 days each week, with two (2) rest days designated for each position. Saturday and Sunday are designated as the rest days each week for the Agency position at Martins Creek, N. J., the Agent's work week beginning on Monday.

After September 1, 1949, when Martins Creek Agent was placed on a 40-hour 5-day work week, it became necessary to work this station six (6)

disregard the Agreement between the parties thereto 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 established that there has been no violation of the applicable Agreement, and that the Claimant is not entitled to the compensation which he claims.

It is, therefore, respectfully submitted that the claim is without foundation in the applicable Agreement and understanding between the parties and should be denied.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

All data contained herein have been presented to the employe involved or to his duly authorized representative.

(Exhibits not reproduced).

OPINION OF BOARD: The Forty Hour Work Week Agreement resulted in the adoption of this clause in the Agreement:

Regulation 5-G-1 (i)

(i) Where work is required by the Company to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe.

The work claimed was Saturday work and it was not a part of any assignment. The Carrier filled an Agent's position on two Saturdays, not with the regular Agent who is the Claimant, but with a Clerk who also had the status of an extra employe under the Agents' Agreement and who had performed 40 hours of work that week under the Clerks' Agreement but none under the Agents' Agreement.

The sole question is whether the 40 hours' work performed under the Clerks' Agreement counts to disqualify this combination Clerk-and-Extra-Agent under the Regulation.

FIRST. When an agreement speaks of "work", the natural and reasonable assumption is that what is meant is work covered by the Agreement, unless some other kind of work is expressly specified.

The Regulation uses the word "work" twice. First, the Regulation says "where work is required by the Company, etc." It seems clear that this simply means Agents' work, and not Clerks' work or work generally. Second, the Regulation speaks of "work" that an employe "will not otherwise have" that week. If we are to take words at face value in their context, there is no reason to assume that the second time the word "work" was used, some different kind of work was also meant. It is suggested that use of the word "otherwise" means any other kind of work, but we take it to mean 40 hours of work other than the extra work.

SECOND. The Regulation came word for word from the National Forty Hour Work Week Agreement (Article II Section 3(i)); but we must construe it "as a separate agreement by and on behalf of each of said carriers

and its said employes" (id, Article VIII). This is an indication that the adoption of the Regulation did not contemplate its application to the performance of work in a combination of positions in different classes or crafts.

It is true that the Carrier is the sole employer, but the employment rights of the employes are by agreement segregated and distributed into crafts. This being so, in situations where an employe acquires status under two agreements, the contractual distribution into crafts is violated if his status under one agreement is given any effect upon his status under the other, whether to his advantage or to his disadvantage (see Award 3674).

In view of the foregoing considerations, we conclude that the 40 hours of work mentioned in the Regulation refers only to work under the Agents' Agreement.

Nothing in this Award is intended to sanction the use of employes from one craft to perform work under another craft for the purpose of circumventing the provisions of the Forty Hour Work Week Agreement. It is the Substitute Agent clause in the Agreement itself, and not this Award, which authorizes the use of the Clerk to perform Agents' work.

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 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1952.