Award No. 5662
Docket No. TE-5618

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

GULF, MOBILE AND OHIO RAILROAD COMPANY

THE ORDER OF RAILROAD TELEGRAPHERS

STATEMENT OF CLAIM: Claim that the Carrier violates the agreement when a cashier at Macon, Mississippi, sells passenger train tickets on Saturdays, Sundays, and holidays for train number 16.

CARRIER'S STATEMENT OF FACTS: At the present time at Macon, Mississippi, the agency forces consist of an agent-operator and a cashier who are assigned from 8:00 A. M. to 5:00 P. M., with one hour for lunch, Monday through Friday, and a telegraph operator who is assigned from 1:00 P. M. to 9:00 P. M., Monday through Friday.

There are four passenger trains that pass through Macon each day. Train No. 15 is scheduled to arrive at 5:13 A. M., at which time no agency employe is on duty. Train No. 12 is scheduled to arrive at 12:17 P. M., at which time the cashier is on duty and sells the passenger tickets. Train No. 11 is scheduled to arrive at Macon at 2:21 P. M., at which time the cashier is on duty and he sells the passenger train tickets. Train No. 16 is scheduled to arrive at 8:14 P. M., at which time the telegraph operator is on duty and he sells the passenger train tickets. On Saturdays, Sundays, and holidays the cashier sells what few passenger train tickets are sold.

With the inauguration of the 40-hour week on September 1, 1949, it was deemed necessary to have an employe on duty on Saturdays and Sundays to expense waybills, quote rates for freight shipments, post cash book, sell tickets, and perform other clerical duties. Because of the large amount of money taken in from freight shipments at this agency on Saturdays and Sundays, arrangements were made with a local bank to accept deposits after banking hours. The cashier is called back on Saturday and Sunday to perform these duties, which are the same as the duties during his week-day assignment.

Prior to the inauguration of the 40-hour week, the agent-operator at Macon worked seven days per week and the telegraph operator and cashier worked six days per week. During this time the cashier was called back, during his regular week-day assigned hours, on a call basis on Sundays and holidays to expense waybills, quote rates for freight shipments, post cash book, sell tickets, and perform other clerical duties, and the telegraph operator was called back on a call basis (two hours) to sell tickets for train No. 16.

The Employes now contend that the telegraph operator should be called back on a call basis on Saturdays and Sundays to sell the passenger train

position and thereby the position was required to work on Sunday and the employe occupying that position was entitled to be compensated under the rule."

AWARD NO. 5117:

"Carrier refers to Rule 1 (e) of the Agreement effective December 1, 1943, as amended July 1, 1945, as authority for what it did here. This rule is a modification of the scope rule of the parties' Agreement and has application in a proper situation of fact where the work is regularly being done. But it is not intended for nor does its language permit the Carrier to invoke its application to have others, outside of the Agreement, perform the work of a regularly assigned position on its relief days when such work is being performed by the employe assigned to such position as a part of his regular duties on the days of his regular assignment."

We invite the Board's particular attention to its Award 4775, which had to do with the carrier in that case assigning Sunday calls of a position to an employe of the same class but of a different shift. The Board rightly held that Sunday work of one shift could not be performed by an employe of another shift, and that the employe occupying the position on which the work had its genesis was entitled to be compensated under the rule. The principle involved in this case is no different from that in 4775. The facts differ to a degree in that here the Carrier instead of using an employe under the Agreement went beyond that and used not only an employe of a different shift but one not even under the Agreement. See Award 4387 also.

In view of the positive terms of the Agreement with respect to service on rest days and holidays, as well as the precedents established by the Board in its decisions against the transfer of work covered by agreement to employes not covered thereby, the employes request that the position of the employes be sustained and that of the Carrier denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This case comes before the Board at the instance of the Carrier. Respondent contended sometime subsequent to September 1, 1949, Carrier extended to an employe not within the Schedule a call on Saturdays, Sundays, and holidays to do work which Respondent had the right to protect. In particular Respondent averred if work performed by the weekday holder of a job remained to be performed on the above mentioned days, said weekday holder had the exclusive right to such work on said days.

Petitioner maintained at least a portion of the work performed on said days and which was also performed during the work week by an employe within the Schedule was not such work as said employe had the exclusive right to protect.

The act committed on the part of Carrier suggests a violation of Article 1 of the Schedule, same being styled "defining employes included". We note nothing in said Article states the various classifications of employes have the exclusive right to protect the work pertaining to such classifications. However, it is now generally accepted that work traditionally performed by telegraphers, such as communication duties, belongs exclusively to the members of such craft. This is necessarily so else the Schedule would be meaningless, see Award 615, opinion by Referee Swacker. What then of those duties customarily performed by members of the above mentioned craft? For instance, telegraphers customarily sell tickets but only when such act is to round out work telegraphers have the exclusive right to be assigned to. Thus we see what has been customarily done is not the test of "exclusiveness", rather we must look to the type or kind of work and whether or not it is peculiar to the craft.

In the case before us Carrier makes the categorical statement that no communication work was involved on the days in question. Respondent averred by reason of information relative to such matter being in the possession of Petitioner it was unable to secure evidence from which to determine the truth or falsity of Petitioner's assertion but that as a practical matter the work must have included some amount of communication duties. Inasmuch as Respondent has not shown it made demand on Petitioner for such information and has not shown by excluding every reasonable hypothesis that the work in question need not necessarily include work to which Respondent has the exclusive right to perform, we find no communication work or work Respondent had the exclusive right to was involved.

Our next inquiry has to do with what effect, if any, the 5 day week agreement has on the matter at hand. Respondent averred Article 15, Sections 1 and 2 establish his rights to the position in question on rest days and holidays. We think the 5 day week agreement constitutes rules which in effect are merely declaratory of the manner or means in which the rights secured by the employes under their Schedule will be carried out, no more no less. On such basis we find the note to said Article explains itself in that we have hereinabove discussed the meaning of the word "work". With regard to the word "position" we think of the various kinds or type of work involved. Accordingly, so far as the individual employe is concerned, said Article benefits him only to the extent the work or position referred to therein belongs exclusively to his craft. Such is not the case before us.

Finally we do not believe evidence of a compromise offer made during negotiations on the property establishes the validity of Respondent's contentions, see Awards 1395, 2283, 3345 and 5212.

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 Petitioner did not constitute a Schedule violation.

AWARD

Claim denied in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of February, 1952.