

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Paul N. Guthrie, 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 the provisions of the Telegraphers' Agreement when it improperly paid the relief employe working 8:00 A. M. to 4:00 P. M. at Port Byron at the telegrapher-clerk hourly rate of pay instead of the agent-telegrapher hourly rate of pay at this station each Saturday and Sunday commencing September 1, 1949; and
- (b) In consequence thereof the Carrier shall now be required to compensate the incumbent of the relief position at Port Byron working 8:00 A. M. to 4:00 P. M., at the agent-telegrapher rate each Saturday and Sunday commencing September 1, 1949, to date of correction of violation.

EMPLOYEES' STATEMENT OF CLAIM: An agreement by and between the parties bearing effective date of July 1, 1948, as amended September 1, 1949 is in evidence, hereafter referred to as the Telegraphers' Agreement; copies thereof are on file with the National Railroad Adjustment Board.

Port Byron, New York is located on the single track West Shore Branch freight line of the Syracuse Division where around-the-clock service has been maintained 24 hours a day seven days a week.

The Organization represents the occupants of the following positions at Port Byron:

Agent-telegrapher— 8:00 A. M. to 4:00 P. M.
Telegrapher-clerk— 4:00 P. M. to 12:00 Midnight.
Telegrapher-clerk—12:00 Midnight to 8:00 A. M.

All of the positions are hourly rated and the Agent-telegrapher position pays $7\frac{1}{2}c$ more an hour than the Telegrapher-clerk positions at this station.

On September 1, 1949 with the advent of the 40-hour work week the Carrier assigned Saturday and Sunday as the two rest days of the Agent-telegrapher position working 8:00 A. M. to 4:00 P. M. Instead of assigning a relief agent-telegrapher to work this position on the assigned rest days, the Carrier placed a relief telegrapher-clerk on the position and paid him

With regard to the claim of alleged violation of Article 20(b) and (c): Paragraphs (b) and (e) of Article 20 read as follows:

"(b) Employees performing service in the classes specified in Article 1 shall be classified in accordance therewith.

"(c) Established positions shall not be discontinued and new ones created under a different title, covering relatively the same class of work, for the purpose of reducing the rates of pay or evading the application of these rules."

Instead of violating paragraph (b) Carrier is being governed strictly in accordance therewith as evidenced by the fact that the employe regularly assigned at Port Byron from 8:00 A.M. to 4:00 P.M., Monday through Friday, performs service specified in Article 1 as agent-telegrapher and is classified in accordance therewith. Also, the employe regularly assigned to relief schedule No. 15 covering Port Byron 8:00 A.M. to 4:00 P.M., Saturday and Sunday performs service specified in Article 1 as telegrapher-clerk and is classified in accordance therewith.

The alleged violation of paragraph (e) is palpably erroneous as there were no positions discontinued and new ones created under a different title, etc. The only change made on September 1, 1949, the commencement date of this claim, was the employment of agent-telegrapher at Port Byron from 8:00 A.M. to 4:00 P.M., Monday through Friday, instead of Monday through Saturday; and telegrapher-clerk from 8:00 A.M. to 4:00 P.M., Saturday and Sunday instead of Sunday only. No positions were discontinued.

CONCLUSION

The evidence herein presented conclusively shows that the Carrier did not violate the provisions of the Telegraphers' Agreement as alleged by the Employees and the claim should, therefore, be denied.

No facts or arguments have been herein presented that have not been made known to the Employees.

OPINION OF BOARD: This docket is concerned with a claim that the respondent Carrier violated the provisions of its agreement with The Order of Railroad Telegraphers by paying a relief employe when working the 8:00 A.M. to 4:00 P.M. shifts on Saturdays and Sundays the rate for telegrapher-clerk instead of the rate for agent-telegrapher at Port Byron, N. Y.

The Organization takes the position that the only 8:00 A.M. to 4:00 P.M. position at Port Byron is that of Agent-Telegrapher. It is stated that the position is one which must be maintained on a seven-day basis. The regular occupant of the position works Monday through Friday, Saturday and Sunday are his regular rest days. This necessitates the filling of the 8:00 A.M. to 4:00 P.M. position on Saturdays and Sundays with a relief employe. The Petitioner contends, therefore, that the relief employe is entitled under the agreement to the agent-telegrapher rate of pay rather than the telegrapher-clerk rate which the Carrier has been paying. Petitioner relies mainly upon Article 11, Section 1(e) of the relevant agreement.

The Carrier contends that the relief employe is being properly compensated with the telegrapher-clerk's rate of pay. It is stated that the work to be performed on Saturdays and Sundays is telegrapher-clerk's work and not that of an Agent-Telegrapher.

As evident from the above stated facts it is clear that complaint concerns the rate which is being paid the relief employe on Saturdays and

Sundays. The question logically arises, therefore, what position is being relieved by this employe? Under the description of positions under schedule (Article 11) there is no question that the position being relieved is the 8:00 A. M. to 4:00 P. M. position of agent-telegrapher. There is no other position between those hours to be relieved on the days in question. Under such circumstances the clear terms of the rule apply as set forth in Article 11, Section 1(e). This rule provides that "the regular relief positions created under this paragraph (e) shall be bulletined and shall be paid the rates applicable to the position on which relief service is performed." Relief service is performed here on the 8:00 A. M. to 4:00 P. M. agent-telegrapher position, for which the agent-telegrapher rate is due under the rule. Therefore, a sustaining award is justified.

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 Carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 17th day of April, 1952.

DISSENT TO AWARD NO. 5722, DOCKET TE-5747

The decision in this case is based upon the erroneous and wholly unsupported conclusion that the agent-telegrapher's work at Port Byron is seven-day service under the description of positions contained in Article 11 and that Claimant relieves the incumbent thereof on Saturday and Sunday, the rest days of the position. Nothing could be further from the facts. The record shows, and it is not denied or disputed, that the agent-telegrapher's work is classified as five-day service thereunder, that no freight is handled on Saturday and Sunday and that the freight station is closed on those days; that Claimant was assigned to work as telegrapher-clerk on Saturday and Sunday for which he was paid the applicable telegrapher-clerk's rate, and that Claimant is not qualified to and does not perform work as relief agent-telegrapher on those days. These facts should have been accepted as admitted inasmuch as they were not denied or disputed.

The Carrier also showed that the practice of utilizing a telegrapher-clerk as such on days the freight station is closed has existed from 1931 or 1932.

Obviously, it is unreasonable to completely disregard a practice of more than twenty years and require the Carrier to pay the Claimant herein a rate applicable to work which he undeniably is not qualified to perform and does not perform, which rate is higher than the established rate paid other employees at the same point who perform identical work. Article 11, Section 1 (e) referred to, which became effective September 1, 1949, specifically confirms the propriety of the long standing practice in expressly providing for the establishment of regular relief assignments, such as the Claimant's herein, "to perform relief work on certain days and such types of other work on other days as may be assigned."

In the foregoing circumstances, the Award sustaining the claim herein is in error.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ A. H. Jones

/s/ C. P. Dugan

/s/ J. E. Kemp