Award No. 5900
Docket No. TE-5917

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carroll R. Daugherty, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE BALTIMORE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Baltimore and Ohio Railroad, that:

(1) The Carrier violated the provisions of the rules of agreement between the parties when effective Sunday, March 17, 1946 it blanks the position of first shift side wire operator in "DE" telegraph office, Chillicothe, Ohio, on Sundays, and transfers work belonging to that position to the first shift CTC block operator in "DO" office, Chillicothe, Ohio; and

(2) The Carrier shall be required to compensate the senior idle extra employe on the senority district, or if no extra employe available, then the regular occupant of the first shift side wire operator position in "DE" office, at the appropriate rate of pay. This claim to commence Sunday March 17, 1946 and continue each Sunday on which this position was improperly blanked.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of July 1, 1928, as amended February 1, 1946 (reprinted July 1, 1948) is in evidence, hereinafter referred to as the Telegraphers' Agreement.

On January 17, 1946, a Memorandum of Agreement was entered into by the parties effective February 1, 1946. This Memorandum was incorporated in the reprinted Telegraphers' Agreement dated July 1, 1948, and is listed in that agreement as Article 22.

At the time of this claim there were two separate offices where employes covered by the Telegraphers' Agreement were employed at Chillicothe passenger Station; "DE" office being on the second floor of the building and "DO" office on the ground floor.

The hours of the first shift side wire operator position at "DE" office were assigned as 7:30 A. M. to 3:30 P. M. The duties of this first shift side wire operator consisted of receiving and transmitting messages, reports and other communications of record via Morse telegraph, telephone and teletype printing machine and certain clerical work.

The regularly assigned hours of the first shift telegraph service employe at "DO" office were from 7:00 A. M. to 3:00 P. M. The duties of this first trick CTC block operator position at "DO" office consisted of operating a

crease is to be allowed the second trick operator and instructions are being issued accordingly."

The Carrier had every reason to believe that the settlement reached on June 2, 1950, and outlined in its letter of December 27, 1950, to the Telegraphers' Organization disposed of all pending matters regarding the position formerly existing in "DE" office. It was not until after the above settlement was reached that the Employes again brought up the former case, relating to Sunday work in "DE" office, in conference on February 25, 1951.

In view of the foregoing the Carrier submits that there is no merit to this claim and it should, therefore, be declined.

The Carrier submits that all data submitted in support of the Carrier's position in this case has been presented to, or is known by the other party to this dispute.

OPINION OF BOARD: The record shows that (1) the position of first trick side wire operator in "DE" office at Chillicothe, Ohio, was originally bulletined on February 1, 1942, as a result of the war-increased demand for the Carrier's services; (2) the position involved six days of work (Monday-Saturday), with Sunday as rest day; (3) the Carrier's first step in recognition of the need for reducing costs in the face of lessened demand for its services was, beginning March 17, 1946, to give the position's duties on Sundays to "DO" office, located in the same building; (4) the position still had duties, even though of diminished volume; (5) during the business recession and beginning March 17, 1949, the position and the "DE" office were abolished entirely and the first shift CTC block position in the "DO" office, which assumed the remaining duties of the "DE" position, was given a wage rate increase in recognition of such increased work; and (6) before March 17, 1946, a relief position for the "DE" assignment was never created, but the Sunday work was done sometimes by the regular incumbent at time-and-half rate, and sometimes by an extra man at the regular rate of pay.

The crux of this dispute is whether or not this "DE" position was, during its existence, in the seven-day category. It could have been so on one or the other of two grounds: (1) It could have been so bulletined and worked. (2) Or, even though bulletined and normally operating as a six-day position, it could, under the provisions of Article 22, Section (b) 3 of the Parties' agreement, have been in the seven-day class if it had been regularly required to work more than three consecutive hours on Sunday.

Careful reading of the bulletining notice fails, in our opinion, to establish the Carrier's contention that the position was designed to be a six-day one. Nor does the Carrier adduce any other compelling evidence in support of this contention. The mere fact that the bulletined rest day was designated as Sunday does not seem to be controlling.

Suppose that the position had been a six-day one. The record suggests that there may well have been sufficient work for the rest day, Sunday, to bring the position into the seven-day category for the purposes of this case. True, the Carrier never established a regular relief position. But this fact seems not to be decisive. There is direct evidence of more than three hours of work on March 14 and March 21. And we may presume a continuance of considerable work from the fact that the Carrier agreed to provide additional compensation to the "DO" position after it took over the duties of the abolished "DE" position.

We conclude, then, that such position is properly to be classified as a seven-day job up to March 16, 1949, its last day of existence. Then the applicable provisions of Article 22, section (a) become effective. For such a position the Carrier had, for the period March 17, 1946, to March 16, 1949, the same three alternatives open to it as it had before March 17, 1946, in respect to getting the work done on the rest day, Sunday: It could have used a regularly assigned relief man; it could have used an extra employee; or it could have used the regular incumbent, paying him at the time-and-half rate for that day. But the alternative of blanking the posi-

tion on Sundays by giving the duties to the "DO" operator was not properly open to the Carrier under the agreement. We are thus led to the conclusion that for the period March 17, 1946, through March 16, 1949, the Carrier violated the applicable provisions of the agreement.

We may be wholly in sympathy with the Carrier's need to reduce costs and for its managerial prudence in attempting to do so, as in the instant case. Neverthless, certain rules of its agreement with the Organization are designed to protect the legitimate interests of its employes; and the Carrier's economy measures must not be suffered to violate these rules.

In respect to the specific claim in this case several other points remain to be disposed of. First, is the claim too "stale" to merit affirmative consideration and action by this Board, especially in view of the fact that, as the Carrier points out, the instant claim was filed more than a year after the parties had settled by negotiation on the property a previous claim arising out of the abolition of the "DE" position on March 17, 1949 (this was the settlement that provided for a higher rate of pay for "DO" telegraphers due to their taking over the "DE" work)? We think not. There are no time limitations on claims in the Parties' agreement or in the Railway Labor Act. And the instant claim relates to an issue that may properly be considered as being distinct from the other above-mentioned one.

Second, the instant claim asks pay for a minimum of eight hours for each Sunday included in the violation period. Yet the evidence strongly suggests that there was not a full day's duties to be performed on those Sundays. Should the award be for a lesser number of hours? Again we think not. Having held that the position was in the seven-day category, we are bound by the provisions of Article 22(a-1) of the agreement to rule that the pay for the rest-day Sundays involved should be for a minimum of eight hours.

Finally, should the pay for these eight-hour Sundays be at the pro rata rate or at the time-and-half rate? We think the former. It is true that the agreement provides time-and-half pay for rest day work. But this Board has held in a great many awards that, with the exception of cases involving holidays and calls, pay for work not performed should be granted at only pro rata rates.

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 Carrier violated the applicable provisions of the Agreement.

AWARD

Claim sustained to the extent set forth in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 30th day of July, 1952.