

Award No. 5967

Docket No. TE-5877

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Grand Trunk Western Railroad Company that:

1. The Carrier violated the provisions of the existing Agreement between the parties when it required the occupant of the agency position at Greenville, Michigan, to assume the duties of the operator-leverman-clerk at Greenville on Monday of each week, (one of his assigned rest days), and required the operator-leverman-clerk at Greenville, Michigan to assume the duties of the Agent at Greenville on Saturday, (one of his assigned rest days), each week and
2. Beginning April 7th, 1950 and continuing until the violation is corrected the Carrier shall compensate the employees involved as follows:
 - (a) Account improper relief furnished the occupant of the position of Agent at Greenville on each Saturday such occupant shall be compensated for eight (8) hours at the time and one-half rate for each such Saturday on which he was improperly relieved.
 - (b) Account improper relief furnished the occupant of the position of Telegrapher-leverman-clerk at Greenville on Monday, such occupant shall be compensated for eight hours, each Monday he was denied the right to work at the straight time rate and for the difference between the straight time rate and the time and one-half rate for service performed on each Saturday.

STATEMENT OF FACTS: There is an agreement between the parties effective July 1, 1944, supplemented as to rules and rates of pay at various times subsequently. At Greenville, Michigan the Carrier has two employees, an Agent and an operator-leverman-clerk, both represented by The Order of Railroad Telegraphers, and one other employee not so represented. Both positions hourly rated. Coincidental with the inauguration of the 40-Hour Week, the Carrier issued instructions to the Agent at Greenville:

"Clerk should be permitted to have off Saturdays and Sundays and you should take Saturdays and Sundays off as well, and permit

the Forty-Hour Work Week became effective, the Agent, as a part of his assignment, was required to operate a telegraph key and the interlocker on Mondays. In turn, the Operator-Clerk was required, as a part of his assignment to perform any reconsigning which might be necessary on Saturdays, but as previously stated, we have no record of where he has actually performed such work.

The Agent at Greenville in his April 7, 1950 protest (reproduced in Carrier's Statement of Facts), referred to Rule F, Article 5, of the Working Agreement. What he undoubtedly meant was Rule 5 (f) of the Agreement which reads as follows:

"(f) Employees will not be required to suspend work during regular hours to absorb overtime."

Carrier submits that the facts as outlined herein will show that the Agent was not required to suspend work during regular hours to absorb overtime.

While the Organization does not so state in their "Statement of Claim," they have progressed the claim with the Carrier on the contention that Section 1(e) of the Forty-Hour Work Week, Rule 6, was violated, however, as Carrier has herein shown, no violation has occurred. Rest days assigned to the two positions at Greenville were strictly in accordance with Section 1(c) of Rule 6, and there was no need for establishing relief assignments. Carrier finds nothing in Section 1(e) which it considers a "make-work" rule and believes that no such condition was intended. The work at Greenville was such that one employe could easily perform all of the work on Monday or Saturday, as the case may be, and no contention has ever been voiced by the Organization that either employe is overburdened. As a matter of further information for the Third Division, the Operator-Clerk position was abolished at Greenville on August 6, 1951 because the need therefor did not warrant its retention.

This claim has been handled in the usual manner up to and including the highest designated officer of the Carrier and, in the absence of a supporting rule in the Working Agreement, has been declined. All data contained herein has, in substance, heretofore been submitted to the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a 40-hour week case, one of several which have arisen as a result of the 40-hour week Agreement between carriers and certain organizations. The 40-hour week Agreement had as its primary objective to give an employe the same amount of pay, as he had received prior to the adoption of the Agreement, with fewer hours work required to receive that pay. It was not contemplated that the employes should, as a result of the Agreement, perform the same number of hours of work as before, thereby entitling them to more pay per pay period. The thought behind the Agreement was that pay should remain the same, hours should be shortened, and that the carriers should effect this with the least amount of additional expense as possible without violating effective agreements.

The 40-hour week, specifically and by interpretation has provided several ways for filling a six or seven day position. Regular relief positions may be established—positions may be staggered so that certain work may be performed on the sixth and seventh days—that qualified extra men may be used if available—or that the incumbent may be used.

In this present case it is claimed that the Agent was assigned, in addition to his own duties, the duties of the operator-leverman-clerk on the Monday rest day of the latter, and that, conversely, the operator-leverman-clerk was assigned the agent's duties, in addition to his own, on the Saturday rest day of the Agent.

The record indicates to us that, by the carrier's requirements, the two positions in question were each six-day positions.

Our question for decision is whether this assignment of work was properly made.

We believe that such a procedure may not be permitted under the terms of existing agreements. Such a method simply is not in the Agreement, while other means of filling positions on rest days are adequately set out.

We distinguish this case from our recent Award No. 5912. In that case a report clerk, on the rest day of a second report clerk, performed certain duties which were normally performed by the second report clerk during his work week. There the grade of positions was the same, as is not the situation in our present case.

Award No. 5271 seems to cover the essential question of the case at hand. In Award No. 5271 it was held that the 40-hour week Agreement did not permit the combination of the duties of agents and operators under conditions similar to those of the present case.

As to the question of whether either of the employees were required to suspend work to absorb overtime, we think that such was not done. Under the terms of the 40-hour week Agreement it is permissible to assign rest days of Saturday and Sunday or Sunday and Monday to occupants of six-day positions. Such was done here. Further, it has not been shown that either Claimant suspended his work to absorb overtime. The facts are that there was a small quantity of work to be done and there was no suspension necessary as contemplated by the rule.

Part 2(a) of the claim should be sustained at the pro rata rate only.

Part 2(b) of the claim should be sustained only for the Monday work (eight hours) at the pro rata rate.

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 Employees involved in this dispute are respectively Carrier and Employees 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

Part 1 of claim sustained. Parts 2(a) and 2(b) of claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

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