

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway Company, that

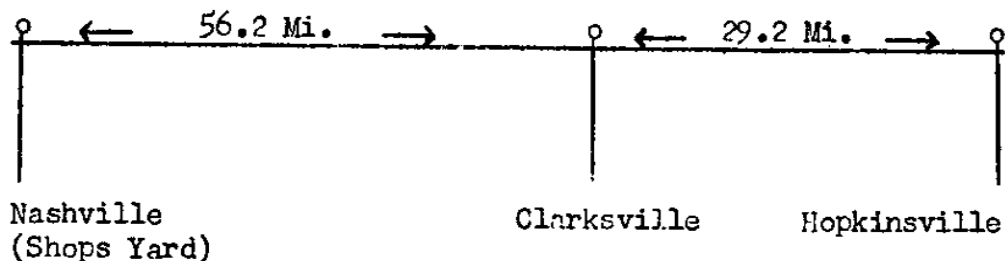
(1) The Carrier violated the provisions of the agreement between the parties during the absence of the regularly assigned operator-clerk from his position at Clarksville, Tennessee, on April 17, 18, 19, 20, 23, 24, 25, 26, 27, 30 and May 1, 2, 3, 1951, when it failed or refused to fill this position by an employe from the Telegraphers' seniority roster and required or permitted an employe not under said Agreement to perform the duties of the operator-clerk on the days aforesaid; and

(2) In consequence of this violation the Carrier shall pay to the employe under the agreement who was idle, and whose seniority entitled him to the work in question, an amount equal to one day's pay at the applicable rate on each of the days specified in paragraph (1), for work denied.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of May 1, 1924, as to rules and working conditions, subsequently revised and amended September 1, 1949, is in effect between the parties, hereinafter referred to as the Telegraphers' Agreement.

Clarksville, Tennessee is located on the single track main line of the Carrier 56.2 miles west of Nashville. Train movements are made by train order and clearance card authority.

The following sketch will serve to explain the geographical locations of the points involved in this claim:



it existed at Clarksville, and his failure to make any complaint at the time is indicative of the conclusion that Carrier was doing the best it could under the circumstances and that its action was not violative of the Agreement.

As to Employees' further contention in Part (1) that Carrier "required or permitted an employe not under said Agreement to perform the duties of the operator-clerk on the days aforesaid," it is submitted that the position was blanked on such days and only a negligible part of the work of the position which was absolutely essential was performed by the agency cashier.

As to Part (2) of Employees' statement of claim requesting a purely penalty payment, it has not been established that any employe under the agreement was entitled to the work in question or pay in lieu thereof, and Carrier submits that the progressing of claim for penalty payment to your Honorable Board when handling on the property has failed to produce a valid claimant is improper.

There is no basis from any standpoint for the claim here made and Carrier respectfully requests that your Honorable Board deny it.

The Carrier is making this submission without having been furnished copy of Employees' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the Petitioner in relation to such issues.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: It is claimed by the Organization that on certain definite dates, during absence of the regularly assigned Operator-Clerk, the Carrier failed or refused to fill the position from the Telegraphers' seniority roster, and required or permitted an employe outside the craft to perform the Agent-Operator's duties, for which request is made for Carrier to allow one day's pay for each day specified to the employe whose seniority under the Telegraphers' Agreement entitled him to the assignment.

The Employees rely on the Scope Rule No. 1 of the Agreement, Basic Rule No. 2, Basis of Pay Rule No. 9, Guarantee Rule No. 10, and Rule No. 17, Seniority and Promotion Rule.

Carrier relies on Rule No. 12 of the Agreement, and contends the duties performed were of an emergency nature, due to illness of the regularly assigned employe, and account there being no qualified employes under the Telegraphers' Agreement immediately available to fill the position, that it was permissible to use an employe of another class who was qualified to do the work, and that an emergency existed as contemplated under Rule No. 12 of the Agreement, reading as follows:

"No employes other than those covered by this agreement shall be required or permitted to transmit or receive train orders or messages by telephone or telegraph except in cases of **emergency**."
(Emphasis added.)

It is conceded that Carrier did require the Cashier, W. L. Trinkle, at the location of the regular position, to perform the duties of the Operator who was ill. The Cashier was not a member of the Telegraphers' craft. Carrier blanked the position herein involved on the days stated by the Employees, and contended it had such right in an emergency. Carrier also stated it had no employes available under the Telegraphers' Agreement who could perform the work, since a shortage of persons suitable for employment as Operator-

Clerks existed and there was only one unassigned Operator-Clerk on the Carrier's working list, and during the time involved in this claim the unassigned employee was filling a temporary vacancy of indefinite duration at another location, with assignment Monday through Friday, the same as the assignment before us.

Carrier has shown it had no immediate available Operator to perform the work of the regular assigned employee. This Board has held that in an emergency Carrier may use other employees outside the Telegraphers' craft, and since Carrier did not have sufficient advance notice the regular employee would be ill so that an Operator could be assigned to work, it did what it could under the circumstances and blanked the position and assigned the work to the Cashier who was qualified, but not of the Telegraphers' craft. We are of the opinion Carrier acted under an emergency which existed and as intended and allowed under Rule No. 12 of the Agreement. We are in accord with the reasoning in Awards 6167, 2827 and 3609. The record sustains the Carrier's contention that it did not have sufficient notice, due to the fact the regularly assigned employee did not give it sufficient opportunity to assign a regularly qualified Operator when she was unable to report for work. The record shows the only employees who may have been available and who may have worked on their assigned rest days, were all situated at a considerable distance from Clarksville and such requirement would have been unreasonable under the circumstances.

There was only one unassigned employee who may have been available. This employee was filling a vacancy at Carthage, which is 117 miles from Clarksville. Certainly it was not practical for Carrier to use a regularly assigned employee, and Rule No. 14 in no way requires Carrier to have regularly assigned employees to perform duties in a temporary position.

The record discloses that during the days involved, the Cashier filling the vacancy handled eleven (11) train orders in the thirteen-day period, which makes it evident the greater portion of the duties performed were of a clerical nature, and we hold that such duties performed by the Cashier were merely incidental and permissive, although included in the Telegraphers' Agreement, and that there was not an encroachment on the rights of the Telegraphers. Awards 6055 and 4259.

It is conceded by the Carrier that a technical violation of the Agreement has been committed in assigning such position to the Cashier, outside the work included in the Scope Rule. We agree that such action by the Carrier was of itself a technical violation, but that it was done by Carrier acting in good faith and not an attempt by Carrier to willfully or arbitrarily deprive employees coming under the Telegraphers' Agreement from performing work which rightfully belonged to them, and we are of the opinion that Carrier, having the discretion to act in an emergency as here existed, did so without actually depriving any of its employees compensation, since none of them suffered any resultant loss. For the reasons above stated, the claim should be denied. Award 1453.

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 Carrier technically violated the current Agreement, but no loss has been suffered by any qualified employee, nor have they been deprived of any rights as contemplated by the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1953.