Award No. 6602
Docket No. TE-6374

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NEW YORK CENTRAL RAILROAD, LINE WEST OF BUFFALO

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad Company (Lines West of Buffalo) that the Carrier is in violation of the provisions of the Agreement between the parties, when

(1) It combines the work of the agent-operator and the operator-clerk at Porter, Indiana each Monday and Tuesday, the assigned rest days of the operator-clerk, requiring the occupant of the position of agent-operator to perform the combined duties of both positions, and

(2) beginning with the first day such violation of the agreement was inaugurated by the Carrier and continuing until corrected, the Carrier shall

(a) Compensate the senior available extra employe for eight (8) hours at the straight time rate for each day such violation was permitted by the Carrier, except if any such day be a holiday the compensation for that holiday shall be at the time and one-half rate, or

(b) If no extra employe available on any day the violation exists, then the Carrier shall compensate the occupant of the position of first clerk-operator for eight (8) hours for each day the violation exists, at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties effective November 1, 1950, containing the rules upon which this claim is based including the rules changed and made effective because of the inauguration of the 40-hour week.

The 40-hour week was placed in effect September 1, 1949 and coincident therewith the violation cited in the Statement of Claim began to run on instructions of the Carrier, continuing uninterrupted from that date henceforth. The violation still exists.

The work week, assigned working days and assigned rest days for the two positions at Porter, made effective September 1, 1949, was: Agent-

that the Carrier must, in effect, use the same number of employes on each day where it has established 6 or 7 day service would require the Carrier to use a greater number of employes than are necessary to perform the work and would promote featherbedding in its worst form.

There has been no claim by the Organization in this case that the work of the Carrier was not properly performed or that the employes concerned were overburdened or that the service rendered to the public was less than desirable. Neither has there been any claim that any work was done by any employe not qualified in fact and by agreement to do it. Under these circumstances it is clearly the right and duty of Management to arrange for the performance of work in a manner which will contribute to the most efficient operation of the property. The Organization, as the moving party, has failed to sustain the burden of proof, and the claims must be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The freight and passenger station at Porter, Indiana, is operated by the New York Central Railroad for its own account and as agent for two other railroads.

The normal force consists of an agent and a clerk-telegrapher on the first trick, 6:00 A. M. to 2:00 P. M. The agent-operator is assigned to work Monday to and including Friday, with rest days of Saturday and Sunday. This is a five-day position.

The clerk-telegrapher is assigned work beginning Wednesday to and including Sunday, with rest days of Monday and Tuesday. This is a seven-day position. These assignments have been in effect since September 1, 1949, the effective date of the 40-Hour Week.

It is the position of the Employes that Article 10, Section 1 (e) is a definite commandment that regular relief assignments be established "to do the work necessary on rest days of assignments in 6 or 7 day service" and the Carrier violates the Rule when it combines the service and requires the occupant of a position which is not a regular relief assignment to perform the service on the assigned rest day of the clerk-telegrapher at Porter, Indiana.

It is the position of the Carrier that the 40-Hour Week Agreement of March 19, 1949, eliminated or modified all former requirements for assigning rest day work, and set up an entirely new method of securing performance of such work by allowing it to be combined with the work of other employes through the medium of "staggering" the work to be performed.

The issue in this case is whether or not the Carrier had the contractual right to combine the duties of another position on rest days and require another employe to absorb the duties of another position or employe on the rest day of said employe. The Employes rely on Awards 5736 and 5737 where it was held that the Carrier did not have the contractual right to combine the duties of another position on rest days and require one employe to absorb the duties of another position or employe on the rest day of the position or employe.

The Carrier relies on Award 6184 where it was said, "The determination of the number of employes needed to perform its work is the function of Management except as it has limited itself by agreement. Under the rules quoted, the assignment of relief employes is not a condition precedent to the establishment of seven-day positions. Relief assignments are only required to be made when there is work necessary to be done. When all the work can be efficiently performed by staggering of regularly assigned employes, the necessity for relief assignment on rest days does not exist. In other words, Carrier may, in accordance with its operational requirements, stagger the work week assignments of employes regularly assigned to seven-day service so that the rest days of some will coincide with the work days

of others and thus make it possible for the regular employe to do all the work necessary to have performed on those days without the necessity of any relief. It should be understood that such employes must be of the same class and within the same seniority district." Other decisions cited by the Carrier are of like import.

In the case at bar, both employes are hourly rated and both work under the same contract and are carried on the same seniority roster and each is fully qualified to perform all work in question. It is evident that Awards 5736 and 6184 are not in harmony. Economy in operating a railroad should be an important item when it does not violate the Agreement. In our opinion, the Carrier was within its rights in handling the work at Porter, Indiana.

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 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

The Carrier did not violate 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 4th day of May, 1954.