# Award No. 6689
# Docket No. TE-6332

## NATIONAL RAILROAD ADJUSTMENT BOARD
## THIRD DIVISION

William M. Leiserson, Referee

---

## PARTIES TO DISPUTE:

## THE ORDER OF RAILROAD TELEGRAPHERS

## GULF, MOBILE AND OHIO RAILROAD COMPANY

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile & Ohio Railroad that:

1. Carrier violated the terms of the Agreement, between the parties when on the 3rd and 4th days of September, 1949, and continuing thereafter on Saturday and Sunday of each week and on designated holidays, it required and permitted employes not covered by said Agreement to perform regular duties of first trick telegrapher at Murphysboro, Illinois, thereby improperly relieving such first trick telegrapher on his assigned rest days and holidays, and

2. Carrier violated the terms of the Agreement between the parties when on the 4th and 5th days of September, 1949, and continuing thereafter on Sunday and Monday of each week and on designated holidays, it required and permitted employes not covered by said Agreement to perform regular duties of second trick Telegrapher at Murphysboro, Illinois, thereby improperly relieving such second trick telegrapher on his assigned rest days and holidays, and

3. That the senior idle telegrapher on the seniority district be compensated at the pro rata rate for each day other than a holiday; for each holiday at the time and one-half rate respectively for each such day the violation exists; or if no extra idle telegrapher then the regular assigned occupant of such positions be compensated at the time and one-half rate for both the rest days and the holidays so improperly relieved.

**EMPLOYES' STATEMENT OF FACTS:** Prior to September 1, 1949, the work week of the first trick telegrapher at Murphysboro, Illinois, was Sunday through Saturday; working days were Monday, Tuesday, Wednesday, Thursday, Friday and Saturday. Assigned rest day Sunday and he was relieved each Sunday by the occupant of a relief position assigned who worked five additional days in relief service elsewhere. This trick was worked seven days each week. It was a seven day position.

Prior to September 1, 1949, the work week of the second trick telegrapher at Murphysboro, Illinois, was Thursday through Wednesday; working days were Thursday, Friday, Saturday, Sunday, Monday and Tuesday. Assigned rest day Wednesday. On Wednesday he was relieved each week by the occupant of a relief assignment who worked five additional days in relief service elsewhere. This second trick was worked seven days each week. It was a seven day position.

"All regular assignments under that agreement are for five days each week. Six and seven day assignments no longer exist. Whether a position is a five, six or seven day position is not affected by the individual assignment of an employe."

Also see Award No. 5581.

Similar provisions were considered by the Second Division in Award No. 1566. In the latter award the Board pointed out that:

"Further, there is nothing in the agreement making the establishment of relief positions to cover rest days a condition precedent. The one is not conditioned on the other."

The agreement does not specify the hours of the day that the employes must be needed to constitute six-day positions. The Employes are attempting to construe the agreement to mean that if a particular employe is not needed between certain hours of the day the Carrier cannot establish six-day positions in a telegraph office, but must either have all of the positions on a five-day basis or on a seven-day basis, and in the instance of a seven-day position an employe must be on duty seven days per week during the hours that an employe is on duty any day of the week. This construction can only result in abrogating paragraph (c) of Section 1, Article 15, of the agreement. Other parts of the agreement provide that the individual employe should work five days per week or 40 hours per week. Paragraph (c), above, is applicable where no service of a telegrapher is required on Sundays, which is the situation at Murphysboro. The agreement recognizes that the requirements for certain services on the weekends may be diminished and that where operations are necessary to be performed on six days per week the employe's rest days will be either Saturday and Sunday or Sunday and Monday. This is what was done at Murphysboro.

From a reading of the 40-Hour Week Agreement, it will be apparent that it contemplated that the Carrier reduce its operations wherever practicable to five days per week. However, it recognized that this could not be done in all instances.

The practical effect of the Employes' claim is that telegraphers be on duty at Murphysboro seven days per week, thus adding unnecessary employes.

The Carrier believes that the present arrangement is practical and is within the prerogative of Management. The Employes, in presenting their claim, have produced no evidence and advanced no argument to the contrary. The Carrier believes that it has shown that the work performed by the dispatchers at Murphysboro is proper under the agreement and precedents established by this Board. The Carrier also believes that it has shown that the 40-Hour Week Agreement contemplated and provided that the operators at Murphysboro can properly be employed so that one or more of them will be on duty six days per week.

For the reasons herein set forth, the Carrier respectfully requests that the claim be declined.

(Exhibits not reproduced)

**OPINION OF BOARD:** The Carrier objects to the Division considering this dispute on the ground that the claim is barred by a Time Limit on Claims Agreement which became effective May 15, 1951. The dispute arose in 1949, and at a conference in November of that year the Carrier's "Contract Counselor" orally declined the claim. On May 22, 1951, the General Chairman wrote to the Counselor stating that he had received no written confirmation of the conference and declination "in the usual manner", and requested confirmation as well as "your attitude toward settlement". The

Counselor replied on May 29 that it was "some eighteen months since the declination of the claim", and that the Time Limit Agreement provided that the declination "shall be final and binding."

There was further correspondence as to whether this Agreement did or did not apply to claims pending prior to its effective date. Then in a letter to the General Chairman dated June 27, 1951, the Carrier wrote: "I understand . . . that you expect to submit the dispute to the Third Division of the National Railroad Adjustment Board. If this is your intention, we are agreeable to joining you in a submission to the Adjustment Board." We think that the Carrier acknowledged by this letter that the claim was still pending from before the effective date of the Time Limit Agreement, and since it agreed to submitting the dispute here, the objection to considering it must be overruled.

Turning to the merits of the dispute, the record is clear that immediately before the 40-Hour Week Agreement became effective on September 1, 1949, the Telegraph Operators her involved occupied 7-day positions within the meaning of the "Note" and Section 1(d) of Article 11 of this Agreement. Three Telegraph Operators were regularly assigned to work in tricks around the clock six days a week, each having one day rest in seven. In addition, there was a regularly assigned Relief Telegrapher who worked on the rest days of the three operators and of some others. These arrangements for covering the 7-day operation date from 1945 when the parties agreed to establish a rest day which was not limited to Sunday.

When it became necessary to provide for two rest days in accordance with the 40-Hour Agreement, the Carrier assigned the First Trick Operator to work Monday through Friday with rest days on Saturday and Sunday, while the Second Trick Operator was given a Tuesday through Saturday assignment with Sunday and Monday as rest days. At the same time, it abolished the assignments of both the Third Trick Operator and of the regular Relief Operator. The Carrier then made arrangements for having train dispatchers and the agent at Murphysboro to do remaining work that had been done by the regularly assigned telegraphers for about five years prior to September 1, 1949. The Carrier has a separate Agreement with the train dispatchers, and the agent is not covered by any Agreement.

The Employes charge that the Carrier violated the Telegraphers' Agreement by thus removing duties from the regular assignments of the telegraph operators and having them performed by persons not covered by the Agreement. They make no claim in the present case with respect to the abolition of the Third Trick Operator assignment, this being the subject of another proceeding before the Division. Nor do they charge any violation with respect to the assignments of the First and Second Trick Operators, which are from 7:00 A.M. to 3:00 P.M. and from 5:00 P.M. to 1:00 A.M., respectively, with no telegraphers on duty from 3:00 to 5:00 P.M. They claim only that, since the Carrier made no provision for a regular Relief Operator or qualified extra employes to do necessary work on the rest days of the two assigned operators, the senior idle assigned telegrapher is entitled to compensation at the rates specified in the Agreement, including the holiday rate, for each rest day that he was not used.

The Carrier's position is that neither a regular relief assignment nor the use of extra employes was necessary to do the work on rest days because the Telegraphers do not have the exclusive right to perform this work, and it was practical to have part of the rest day work done by train dispatchers and part by the agent. It stresses the fact that the Telegraphers' Agreement stipulates that train dispatchers as well as employes covered by the Agreement may "be required or permitted to do telegraphing or telephoning in connection with the movement of trains," and that ticket selling is a traditional function of the agent, although this work is also assigned to telegraphers. It also points out that in 1929 there were only a First and a Third Trick Operator at Murphysboro, the Second Trick duties being performed by a train dispatcher; and for 12 years from 1930 to 1942, there was

only one operator employed, the dispatcher doing the remaining work. It argues that the right it had to use dispatchers in this manner under the previous Agreement was not taken away by the 40-Hour Agreement.

This dispute arose out of the arrangements for changing from a 6 to a 5-day work week. The Carrier states at page 21 of the record that "because of the decrease in traffic" it was necessary to have only one telegrapher on duty on Saturdays and one telegrapher on Mondays, and that it is not necessary to have a telegrapher on duty at Murphysboro on Sundays or holidays. But at page 23, it says that the assignments of the operators were rearranged "as a result of the application of the 5-day week agreement." These statements are not necessarily contradictory; it is possible that there may have been some decrease in traffic. Nowhere in the record, however, does the Carrier present any evidence to show that the rearranged assignments were due to decreased traffic, and after the assertion on page 21, the Carrier's submissions do not again mention the subject of reduced traffic. The evidence in the record shows only that the Carrier did not consider that telegraphers were needed on Saturdays, Sundays, Mondays and holidays because the necessary work on those days was being performed by train dispatchers and the agent.

The issue in the case is, therefore, whether the fact that the Telegraphers do not have exclusive rights to perform the duties assigned to telegraph operators justifies the Carrier in transferring those duties that were required on the rest days and holidays of the assigned telegraphers to persons outside of the Agreement between the parties, or whether it violated the 40-hour work week rules by so doing. It is clear that train dispatchers and the agent regularly perform some of the same duties as the telegraphers. It is also true that there was plenty of work necessary to be done on the rest days of the assigned telegraphers, or the Carrier would not have issued instruction to remove this work from the assignments they held prior to September 1, 1949, and turn it over to the other employes not covered by the Agreement. An additional fact to be borne in mind is that the Carrier removed the duties from the telegraphers' assignments when it was converting from the 6-day to the 5-day work week.

Although neither party referred to Section 1 (k) of Article 11, we think this provision has a bearing on the instant dispute. Paragraph (k) stipulates:

> "Regular assignments reduced to a five-day basis under this agreement shall not be considered new jobs under bulletin rules and employes will not be permitted to exercise displacement privileges as a result of such reductions. However, employes will be notified of their assigned rest days by the posting of notices or otherwise."

Plainly the intent was to preserve the assignments intact for the occupants except that there were to be two rest days instead of one, and the 40-Hour Agreement made specific provisions for necessary service on these rest days. In the process of converting to the shorter work week, the occupants could not be displaced by other employes covered by the Agreement. But the Carrier is in effect contending that it could at the time it inaugurated the 5-day week, treat the service which is required on the rest days and holidays as new jobs which could be removed from the assignments and given to the train dispatchers and the agent.

The Employes are here not claiming exclusive rights to do all telegraphing and ticket selling work. They claim only the right to continue to perform the duties of the bulletined assignments which they held by reason of their seniority when work days were reduced to five. They do not contest the right of the train dispatchers and the agent to do such telegraphing and ticket selling duties as these employes had been doing before the 40-hour work week became effective. What they do contest is the asserted right of the Carrier unilaterally to remove work from the telegraphers bulletined

assignments and turn this work over to the other employes not covered by the Agreement.

We think, since the telegrapher assignments here involved were preserved to the occupants and they could not be displaced as a result of the reduction to a 5-day week, the Carrier could not transfer the duties of the regular relief assignment to others than telegraphers who were entitled by the Agreement to perform those duties.

Assuming without deciding that it was not practical for any reason to establish a regular assignment when the work days were reduced to five per week, the rest day rules make provision for just such situations. Section 1 (e) of Article 11 provides that "All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work necessary on rest days of assignments in six or seven-day service or combinations thereof," and it goes on to say in part: "Where it is not practicable . . . to cover all rest days on a seniority district by establishment of regular relief assignments of five (5) days, work on rest days not covered by such assignments may be performed by qualified extra men if available who will be paid pro rata rates therefor."

In addition, if it is not practicable to maintain a regular relief assignment at all, the Carrier may leave work on rest days go unassigned. But if it does this, work is still reserved to the regularly assigned employes, except that extra employes may have priority under a specified condition. Paragraph (n) of Section 1, Article 11, provides. "Where work is required by the Carrier to be performed on a day which is not a part of any assignment, it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week; in all other cases by the regular employe."

Thus the Carrier had a contractual obligation in converting to the 5-day week to have its necessary rest day work in the Murphysboro seniority district performed either by a regular relief telegrapher, or by a qualified extra employe, or by a telegrapher holding a regular bulletined assignment. It chose to leave the admittedly necessary rest day work unassigned, so far as the Agreement was concerned. But instead of complying with the provisions of the rule governing work on unassigned days, it took this work out from under the Agreement, and made it parts of the assignments of other employes not covered by the Agreement.

By so doing, we think the Carrier failed to meet its obligations under the plain provisions of its 40-Hour Agreement with the Telegraphers. It undoubtedly has the right to assign ticket selling duties to the agent and telegraphic work in connection with the movement of trains to train dispatchers, as well as to have these duties performed by the telegraphers. But the assigning of this work to which no one craft has an exclusive right is a matter of contract between the Carrier and two or more labor organizations. And when, as in this case, it has contracted with the telegraphers to have the duties they perform in accordance with their bulletined assignments as they performed them before the 5-day week was put into effect, the Carrier may not disregard the obligations of this contract because it has a contract with another craft and no contract with other employes who perform all or some of the same duties.

The contract or Agreement here involved reserves to the Carrier the right to abolish assigned positions, and contains rules governing what may be done when positions are abolished. But there is no claim in this case for restoration of any abolished position. The Agreement also establishes and protects employes' seniority, and courts have held that seniority rights are property rights of employes. Because the claimant telegraphers held their bulletined assignments by reason of their seniority, it seems plain that the seniority rules were also disregarded when the Carrier transferred to others the work on rest days to which the assigned telegraphers were entitled by reason of their regular assignments.

In support of the Carrier's position, many awards are cited which have stated that the telegraphers do not have exclusive rights to telegraphing, ticket selling, and related clerical work. But an examination of those awards shows that lack of exclusive rights alone was not the determining factor in the decisions that were made. The counter factor of contractual obligations was also considered. Thus in Award 5256 where the parties were the same as here, the Carrier abolished a position which it had the right to do under the rules of the contract. There was some remaining work required which was given to a train dispatcher. The Board found that if the train dispatchers were doing such work in 1929, the train dispatcher was properly given the work, but if in 1942 when the dispute arose, the work was "substantially different in character and volume from what it was in 1929, the telegraphers are entitled to it under their Agreement." This is no authority for diverting work from an existing assignment merely because the telegraphers did not have exclusive rights.

Another award involving the same parties (No. 5662) dealt with the question whether a telegrapher-clerk or a cashier covered by an Agreement with another Organization was entitled to a "Call" for work on Saturdays and Sundays. The claim was that the telegrapher-clerk should have been called because some, not all, the duties he performed on his assignment were required on the days in question. The Board found that "no communication work or work Respondent (Telegraphers) had the exclusive right to was involved." The claimant's work consisted mainly of communication duties, he also did some incidental ticket selling. The cashier's duties included a good deal more of ticket selling work. Also the cashier had regularly been called on Sundays and holidays, prior to the 40-Hour Agreement, to perform the same duties that he was performing under this Agreement when the dispute arose. This the award, in holding that the cashier was entitled to the "Call" merely applied the service on rest day rules of the 40-Hour Week contract to the facts in that case, and its remark about the telegraphers not having exclusive right to the incidental duties of the claimant's position was not the basic ground of the decision.

In still another case involving the same parties, Award 6041 denied a claim that the Carrier had violated the 40-Hour Agreement by having conductors collect cash fares after certain one-man stations were closed on Saturdays and Sundays where selling tickets was one of the duties of the employe in charge. The Board didn't even mention exclusive rights in its decision. Similarly, awards on other Carriers were cited, where stations were closed and positions abolished, resulting in conductors copying train orders (6487), or where there was no work left to be performed (5803), or incidental work only was left (5468), or train dispatcher was permitted to do block operating in connection with reduced commuter train service on Sundays (6042). We think such cases have no pertinence on the Carrier's assertion of right in the present case to make arrangements for removing work from assignments which belong to the occupants, where there is plenty of such work to be done, and have this performed by other employes because those other employes also have the right to perform similar duties under their employment contracts.

This is evident from the fact that the Board, with the same Referee participating as in 6042, ruled in Award No. 5579 that the provisions (of the 40-Hour Agreement) "establish the manner of filling positions on rest days and the employes entitled on such days to perform the services regularly and customarily assigned to and performed by the position. **The fact that the services involved are not reserved exclusively to Clerks under the Scope Rule does not justify the assignment of such duties on rest days to employes of another craft or class in violation of those specific rules.**" (Emphasis added.)

Award 5437 sustained a claim on facts the same as here, except that the duties of the claimant telegraphers were transferred to telegraphers in another seniority district. Obviously no one seniority district has exclusive rights to perform telegrapher duties. If the contract forbids transferring

rest day duties from one seniority district to another, it can not be held that the Carrier had the right to remove the rest day work entirely from the coverage of the Agreement. In Award 5736 it was held that the Carrier did not have the contractual right to combine the duties of a clerk-operator's position with those of an agent-operator's position on rest days, so that one employe would absorb the duties of another assigned position on such days. A group of Awards (5271 to 5275) ruled to the same effect.

Our attention was directed to Award 6184, which, it was contended, held to the contrary. The claim in that case was that in staggering telegrapher assignments at Norfolk, Virginia, where seven-day service is required, the Carrier violated the 40-hour work week rules by "failing to fill the two positions on the assigned rest days of Monday and Tuesday." The Board ruled in that case that the "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 was careful to add, however, **"that such employes must be of the same class and within the same seniority district."** (Emphasis added.)

Clearly that ruling is contrary to the position of the Carrier in the present case where the train dispatchers are certainly not in the same class and seniority district with the telegraphers. Moreover, the Board found that as a result of the staggering to cover all seven days of the week, there was no relief required on the two rest days in question, because there was no work left to be done on those days. Here, however, the Carrier did not stagger the assignments on a seven-day basis, although seven-day service was required. Instead it staggered two assignments on a six-day basis and dispensed with a relief assignment, so there was plenty of necessary rest day work to be done.

For all the above stated reasons, we find the Carrier violated the Agreement and the claim must be sustained. Compensation should be at straight time rates in accordance with previous awards involving penalties in similar cases.

**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 Agreement was violated.

AWARD

Claim sustained at pro rata rates.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 25th day of June, 1954.

**DISSENT TO AWARD NO. 6689, DOCKET NO. TE-6332**

The record shows, and the Referee finds and admits, that the work in question was not reserved exclusively to members of the complaining craft (The Order of Railroad Telegraphers). The Referee correctly defined the issue when he said that:

> "The issue in the case is, therefore, whether the fact that the Telegraphers do not have exclusive rights to perform the duties assigned to telegraph operators justifies the Carrier in transferring those duties that were required on the rest days and holidays of the assigned telegraphers to persons outside of the Agreement between the parties, or whether it violated the 40-hour work week rules by so doing."

By agreement and practice on this property, the work involved was performed interchangeably and jointly by Telegraphers and Train Dispatchers. The assignment of work between the two crafts varied from time to time in accordance with operational requirements as determined by the management. The record shows without dispute that this practice had been followed on this road for a great many years without complaint or protest on the part of any labor organization. For many years prior to the effective date of the 40-Hour Week, Dispatchers on this railroad did all of the work involved in this dispute and even now they do all of it at different stations and on certain tricks. This unusual situation has been repeatedly recognized and approved of by this Board. In Award 5256, involving these same parties, this Division, with Referee Boyd, found that on this railroad there was, by long established practice, a common interchange of work between Telegraphers and Dispatchers. In Award 6650, rendered with the assistance of Referee Rader, the claim was exactly the same as the claim in the present docket. It involved assignment of work on the 3rd shift at the same station where work on the 1st and 2nd shifts is involved in the present docket. There, as here, the Carrier abolished a Telegrapher's assignment and transferred certain work to Train Dispatchers upon the inauguration of the five-day week in September, 1949. On a finding that the Carrier, by long past practice and agreement on this property, had the right to require Dispatchers to perform this work, the Referee denied the claim. In his Opinion the Referee said, " * * * the Scope Rule in the effective Agreement, in our opinion, does not give the exclusive right to Petitioners to the work in question," and "On the proposition that Carrier has the right to abolish positions, under certain conditions, all concerned are in apparent agreement. * * * In fact, the absence over a period of years to protest such a practice gives credence to the position taken by Carrier herein."

In another recent award (6675), rendered with the assistance of Referee Bakke, another similar claim involving the same parties at a different station on the same railroad was denied.

The persistent refusal of this Referee to give attention to previous decisions by this Board on analogous disputes, frequently manifested in his other awards, is again apparent here.

The gist of the complaint in the present case, according to the Referee, was that certain of the work was re-assigned from Telegraphers to Train Dispatchers at the time of the adoption of the 40-Hour Week in September, 1949. The Referee finds this complaint to be well founded and sustains the claim on the ground that the action of the Carrier amounted to "removing work from the Telegraphers' assignments," and to "turning it over" to other employes. At another point, he refers to "taking this work out from under the Agreement."

In his Opinion, the Referee, while admitting that the work involved is not exclusively Telegraphers' work and while recognizing the right of Carrier to assign it to other employes, sustains the claim, nevertheless, on the totally unsupported and unreasonable finding that the work could not be re-assigned

at the particular time the 40-Hour Week Agreement became effective. This work is either exclusively Telegraphers' work or it is not. If it is not Telegraphers' work to begin with, there can be nothing wrong with giving it to somebody else. The Carrier may assign it at any time, or from time to time, to any other craft or class authorized to perform it.

Nothing in the 40-Hour Week Agreement guarantees to employes forever the particular work that they happened to be doing when the Agreement became effective. The Carrier continues to have the same rights to assign and re-assign work as it had before and this holding that certain work assignments which happened to be in effect on August 31, 1949, could not be re-assigned at the time the 40-Hour Week became effective is manifestly absurd and unsupportable. The Referee must have been aware of this because he found an entire absence in the submissions of the parties of any reference to any rule of the Agreement which could have the described effect. Faced with this dilemma, he has undertaken to supply the deficiency.

He has stated:

> "Although neither party referred to Section 1(k) of Article 11, we think this provision has a bearing on the instant dispute. Paragraph (k) stipulates:
>
> > 'Regular assignments reduced to a five-day basis shall not be considered new jobs under bulletin rules and employes will not be permitted to exercise displacement privileges as a result of such reductions. However, employes will be notified of their assigned rest days by posting of notices or otherwise.' "

This action by the Referee was not only improper but has resulted in a finding which violently perverts the injected rule. This rule never intended to, and in fact does not, provide for a result such as is here attempted to be attributed to it. The plain and sole purpose of the rule was to relieve the carriers and the employes of the confusion which would have occurred had the carriers been required to rebulletin all jobs at the time the five-day week became effective. The function of the rule was confined exclusively to the period of the conversion and had no subsequent or continuing effect. In fact it has since, by agreement of these very parties, been eliminated from their Agreement and did not even constitute a part of their contract at the time this Opinion was written.

The Referee has reached his conclusion in this Award by disregard of the facts, disrespect of precedent, and misapplication of the Agreement and we dissent to its adoption.

/s/ C. P. Dugan

/s/ R. M. Butler

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ E. T. Horsley

# NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

---

### Interpretation No. 1 to Award No. 6689

### Docket No. TE-6332

**NAME OF ORGANIZATION:** The Order of Railroad Telegraphers.

**NAME OF CARRIER:** Gulf, Mobile and Ohio Railroad Company.

Upon application of the Carrier involved in the above Award, this Division was requested to interpret the same because of an alleged dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act.

The record in the application for interpretation shows that is primarily based on a statement in the Award that Section 1(k) of Article II of the Agreement between the parties "has a bearing on the instant dispute." Because of this statement, the Carrier alleges that this "is the contractual provision relied upon as justifying a sustaining award." It used the same argument among others in requesting a rehearing of the case involved in Award 6689, which request was denied by this Division on January 17, 1955.

The Carrier now asks that Award 6689 be interpreted so that the claims sustained by the Award "should cease on September 30, 1952," when the parties agreed to eliminate Section 1(k) from their Agreement. But the Award sustained the claims on the basis of other specific violations of contractual provisions, in addition stating that 1(k) had a bearing on the dispute. These violations were summarized in the Award as follows:

> "Thus the Carrier had a contractual obligation in converting to the 5-day week to have its necessary rest day work * * * performed by a regular relief telegrapher, or by a qualified extra employe, or by a telegrapher holding a regular bulletined assignment. But instead of complying with the provisions of the rule governing work on unassigned days, it took this work out from under the Agreement, and made it part of the assignments of other employes not covered by the Agreement.
>
> By so doing, we think the Carrier failed to meet its obligations under the plain provisions of its 40 Hour Agreement with the Telegraphers."

These violations began on September 3, 4 and 15, 1949 and they continued thereafter both before and after Section 1(k) was dropped from the Agreement. The effect of Award 6689 and its application is clear on the basis of these violations, and the Petitioner's contention with respect to 1(k) is in effect a reargument of its requests for a rehearing of the original case. Accordingly the application for interpretation based on Section 1(k) should be and is hereby denied.

A second question in the application for interpretation raises a new issue as to how to identify the senior available employes whose claims were

sustained by the Award. No such question was raised or argued in the original submissions, and since this is a new issue it cannot be considered by the Division as a dispute involving interpretation of Award 6689. This question, too, should be dismissed.

Referee William Leiserson who sat with the Division, as a member, when Award No. 6689 was adopted, also participated with the Division in considering the application for interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 24th day of June, 1955.