Award No. 6690
Docket No. TE-6398

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William M. Leiserson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GEORGIA RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Georgia Railroad that:

(1) The carrier is in violation of the agreement between the parties when it combined the work of the Telegraph Clerk with the work of the Agent Telegrapher at Thomson, Georgia each Monday beginning with the first Monday following September 1, 1949 continuing until October 26, 1950, requiring the Agent-Telegrapher to perform such combined duties on each such Monday, the assigned rest day of the Telegrapher-Clerk, and

(2) when it combined the duties of the Agent Telegrapher with the duties of the Telegrapher-Clerk each Saturday for the same period of time named in Paragraph 1, requiring the Telegrapher-Clerk to perform such combined duties on each Saturday, the assigned rest day of the Agent-Telegrapher, and

(3) the Carrier shall now compensate the senior idle extra available telegrapher for eight hours at the straight time rate for each Monday and Saturday that the occupants of the positions named in Paragraphs 1 and 2 were so used, or if no such extra idle available telegrapher, then the Carrier shall compensate the regular occupant of the positions of Agent-Telegrapher, and Telegrapher-Clerk at Thomson, Georgia for eight hours at the time and one-half rate for each such Monday and Saturday that such violation of the Agreement existed.

(4) Where a Holiday is involved the compensation for any employe shall be at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: At Thomson, Georgia on the Georgia Railroad two positions existed. One an Agent-Telegrapher and one a Telegrapher-Clerk.

As of September 1, 1949, the assignments for these two positions were:

Agent-Telegrapher, assigned hours 7:00 A.M. to 3:00 P.M. Assigned working days—Monday, Tuesday, Wednesday, Thursday, and Friday. Assigned rest days, Saturday and Sunday. Relieved on Saturday by the Telegrapher-Clerk. Sunday the office was closed.

As we have point out above, it was not practical to make a relief assignment at Thomson or to perform the work with extra men. No rule of the agreement was violated by the assignment in question. We further feel our action is sustained by this Division in Awards 5364 and 5250.

We feel the claim is without merit and respectfully request it be declined.

All data contained herein has been made available to Petitioners.

OPINION OF BOARD: At Thomson, Ga., an Agent-Telegrapher and a Clerk-Telegrapher both worked Monday through Saturday prior to September 1949, and both had Sunday as their rest day. Each of the assignments thus covered services required six days a week. In converting to the five-day week, the Carrier staggered these two assignments, so that the Agent-Telegrapher worked Monday through Friday with Saturday and Sunday as rest days, and the Clerk-Telegrapher worked Tuesday through Saturday and had Sunday and Monday as rest days. In this way the necessary services on six days were covered. But because work days had been reduced to five per week, the Agent-Telegrapher performed on Mondays not only the duties of his own assignment, but also those of the Clerk-Telegrapher. Similarly the latter performed the duties of both assignments on Saturday. The duties of the two assignments were not the same; they differed in important respects, and the Agent-Telegrapher's rate of pay was higher.

The Employes charge that the Carrier violated the Telegraphers' Agreement by thus combining the assignments on Mondays and Saturdays, and they claim that compensation is due either to the senior extra qualified employe who was available on the days in question, or to the regular employe of each assignment when his duties were performed by the other.

The Carrier states:

> "* * * We found we could not make a relief assignment at Thomson on the sixth day, * * * and it would have been impracticable to have tried to fill the job with extra men, as there would have been very few Saturdays, if any, when they would have been available * * *. We do not construe Paragraph (c) (of Article 4, Section 1) to mean that every individual position must be filled six days a week. We feel it is possible to work part force on Monday as well as on Saturday, * * *. It may be that the Clerk-Telegrapher is entitled to Agent's pay on Saturdays, if he performed Agent's work, but no claim was made for same. * * *"

The reasons given for not making a relief assignment and for the unavailability of extra men appear to be reasonable, but the Carrier seems to have overlooked the requirement of the Agreement that the regularly assigned employe shall be used when on his rest days there is no relief assignment to cover the work, and no extra employe is available. The claim here is that the occupants of two regular assignments should have been used to do the necessary work of their respective assignments on their rest days.

This Division has ruled in many Awards that the assignments of agents and telegraphers may not be combined for the purpose of staggering six and seven day positions, so that one employe would be required to perform the duties of two different assignments on certain days. (5736, 5579, 5271, 5275, 5967.) These Awards made plain that the rules of the 40-Hour Agreement prescribe that the Carrier's first obligation is to establish a regular relief assignment. If this is not possible an available extra employe may be used. But if this too is not possible or practical, then the regularly assigned employe shall be used.

We find that the Carrier violated the Agreement, and the claim must be sustained.

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.

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. 6690, DOCKET NO. TE-6398

To a person unfamiliar with the decisions of this Board on the question involved in this case, the unusually brief Opinion which this Referee has filed here might convey the impression that he has simply disposed of the matter by applying principles which have been firmly and consistently established by a long line of previous decisions by this Board on this question. Nothing could be further from the truth. The overwhelming opinion of this Board has been exactly contrary to the decision in this docket.

The fact is that the issue in this case, namely, whether separate rest day assignments need be made in 6-and 7-day service, has been ruled upon by this Board 36 times in the past four years. In 31 awards*, rendered with the assistance of twelve different referees, it has been held that the carriers may perform all necessary work through the device of staggered regular assignments; that work ordinarily performed by two or more employes may be consolidated and performed by a lesser number of employes on rest days; and that individual jobs need not be filled on rest days either by regular relief employes, extra employes, or regular employes working on overtime, where the work to be done does not require it.

In only 5 awards** (those cited by the Referee), has it ever been held that the carriers may **not** perform all relief work through staggered assignments or that where the assignments are staggered all rest days must be individually filled; a theory which is founded on the old "continuous operation" rules in effect prior to September, 1949. The most recent of these 5 awards was rendered on October 21, 1952; 22 of the 31 contrary decisions on this question have been made since that date. Each of the five decisions had, therefore, been reversed or overruled, expressly or by implication, at least 22 times up to the date that this dispute was substituted to this Referee.

*Third Division Awards Nos. 5250, 5290, 5545, 5546, 5547, 5912, 6001, 6002, 6042, 6075, 6184, 6212, 6216, 6232, 6602; Second Division Awards Nos. 1528, 1565, 1566, 1644 to 1655, 1669.

**Third Division Awards Nos. 5271, 5275, 5579, 5736, 5967.

The existence and nature of all of these prior decisions was made fully known to the Referee in the submissions and briefs of the Board Members in this docket. Notwithstanding this, the Referee has chosen to ignore the 31 awards which are favorable to the position of the carrier and has instead arbitrarily selected the five old, superseded and plainly erroneous awards as the sole ground for his conclusion. Why he did this does not appear. No explanation is contained in the Opinion. No mention is even made of the majority awards. The Referee has for some reason not seen fit to explain why he thinks the 22 current awards are wrong or why or how he believes the five old awards reach a more justifiable conclusion.

Neither does the Referee make any attempt to discuss the issue on its merits, although voluminous evidence of the intention of the parties in adopting the 40-Hour Week rules was made available to him. We don't know what reasoning, if any, compelled him to find, in effect, that the old "continuous operation" concept which required individual jobs to be filled every day, was not abandoned with the adoption of the new agreement.

The result which the Referre has reached in this case indicates that he has completely confused the rules of the 40-Hour Week Agreement and has attempted here to apply a rule which has no application to the facts of this case. The Opinion states:

> " * * * the Carrier seems to have overlooked the requirement of the Agreement that the regularly assigned employe shall be used when on his rest days there is no relief assignment to cover the work, and no extra employe is available."

And, at another point:

> " * * * the rules of the 40-hour Agreement prescribe that the Carrier's first obligation is to establish a regular relief assignment. If this is not possible an available extra employe may be used. But if this too is not possible or practical, then the regularly assigned employe shall be used."

These quotations indicate the basis for the Award. This basis is unsound and erroneous for two obvious reasons.

First, the rule reffered to—namely, the requirement to use an available extra or unassigned man and if none is available, then to use the regularly assigned man—has to do **only with the performance of work on a day which is not a part of any assignment.** There was no work performed in this case on any day which was not a part of an assignment and the principle referred to by the Referee has no application here. There is no rule in the 40-hour Week Agreement which deals with the identity of any person to be used to fill an assignment or to perform work on a day which is a part of an assignment. It should be noted that the Referee does not refer to any supporting rule by number—for the obvious reason that there is no such rule.

Secondly, the opinion ignores the major and most common device provided by the 40-Hour Week Agreement for the performance of work on 6 or 7-day operations, namely, "staggering forces." It is inconceivable that anyone dealing with this Agreement could overlook that device since the Agreement is replete with reference to it and the Emergency Board which recommended the 40-Hour Week continually—throughout its Report and Interpretation of the Report—cautioned the parties that it was recommending a "staggered" work week.

For instance, in their letter of February 27, 1949, interpreting their Report, the Members of the Emergency Board said:

> "The next question ralates to the staggering of the workweek and Saturdays and Sundays as the days of rest. Obviously, if the workweek is staggered some employes cannot have these specific

days off. That the Board expected deviations from this pattern is made abundantly clear by its repeated use of the expressions 'staggered workweek', 'in accordance with operational requirements," and 'so far as practical.' The great variety of conditions met in the railroad system of the country and even varied conditions on a single railroad require flexibility on this matter. The tenor and substance of the Board's discussions and recommendation show definitely that the Board intended to permit the Carriers to stagger workweeks. In contrast with the obligation of the Carriers to sustain the burden of proof in the matter of non-consecutive rest days, it is for the employes here to show that some particular operational requirements of the Carrier are not better met by having the workweeks staggered."

All that the Carrier did in this present case was to stagger the assignments of two employes covered by the same Agreement in the same seniority district, so as to provide service over a period of 6 days. To hold that this is improper under the Agreement and that only devices open to the Carrier were to make a relief assignment (for one day!), to use an extra man, or permit a regularly assigned man to work on the sixth day at time and a half, is so contrary to the plain provisions of the Agreement, the intent of the parties to it, and to the great weight of decision of this Board, that it can only be assumed that the Referee's decision was intended to change the Agreement rather than apply it.

The Award is so manifestly unsound and unsupported as to be unworthy of faith and credit and we vigorously dissent to its adoption.

/s/ C. P. Dugan

/s/ R. M. Butler

/s/ W. H. Castle

/s/ E. T. Horsley

/s/ J. E. Kemp