

Award No. 6693
Docket No. TE-6523

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William M. Leiserson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ATLANTA & WEST POINT RAIL ROAD—THE WESTERN
RAILWAY OF ALABAMA

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlanta and West Point-Western Railway of Alabama; that

(1) The Carrier violated the provisions of the Telegraphers' Agreement between July 15, 1950 and September 8, 1951, inclusive, when on certain Saturdays and Sundays it required or permitted the regular assigned occupant of the Agent-Telegrapher position at Boylston, Alabama, to suspend work on these Saturdays and Sundays which the Carrier designated as the assigned days of rest for the employe regularly occupying such position and proceeded to relieve him with an employe not covered by the prevailing Telegraphers' Agreement and who held no seniority thereunder; and

(2) The Carrier shall be required to now compensate the occupant of the Agent-Telegrapher position at Boylston between July 15, 1950 and September 8, 1951, inclusive, under the provisions of Article 10, Section 1, paragraph (m)-B (1) and (2) for each Saturday and Sunday he has been deprived of proper payment because of the violative act of the Carrier.

EMPLOYEES' STATEMENT OF FACTS: An agreement effective September 1, 1949, as amended July 12, 1950, is in effect between the parties.

Prior to July 3, 1950, Boylston, Alabama was a one-man agency with Agent-Telegrapher H. L. Austin in charge, working assigned hours 8:00 A. M. to 6:00 P. M. with one hour for lunch, five days a week, Monday through Friday. The station was closed each Saturday and Sunday and the Agent-Telegrapher was subject to be called out to protect and perform any work arising on rest days.

Commencing July 3, 1950, and continuing until September 14, 1951, the Carrier created a position of general clerk to assist the Agent-Telegrapher at Boylston agency, hours 1:00 P. M. to 9:00 P. M. with an assigned meal period of 20 minutes. The Clerk's position was scheduled to work Monday through Friday. The employe assigned to perform this work was not covered by the Telegraphers' Agreement.

Commencing August 10, 1950, the one hour overtime worked each work day by the Agent-Telegrapher at Boylston was discontinued by orders of the

(h) No overtime will be worked except by direction of proper authority except in cases of emergency where proper authority is not obtainable.

(i) In working overtime before or after assigned hours, employees regularly assigned to class work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time (as distinguished from relief work, regularly assigned or otherwise) on holidays or rest days.

(j) It is understood that where only a little work is required on each of several positions, the employee carrying the highest rate will be the one called and such employee will perform work on his or other positions in the office under such conditions.

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

(l) When time is claimed in writing and such time claim is disallowed, the employee making the claim shall be notified in writing and reasons for nonallowance given."

* * * * *

The Agent-Operator made claim for a call each Saturday and Sunday the Clerk was used, basing his claim, on the fact that on those dates the Clerk allegedly used the telephone to perform communication of record service. We could find no communication of record service nor did the Claimant offer any, only making a general statement to that fact.

As there was no proof of a violation of the Telegraphers' Agreement and no rule on which to base the claim, it was declined.

This being clerical work five days per week, it was clerical work on rest days and the Clerk was called in accordance with his working agreement. There is no merit to the instant claim of the Telegraphers' Organization and we respectfully request it be declined.

All data contained herein has been made available to Petitioner.

OPINION OF BOARD: Claimant is regularly assigned to the position of Agent-Telegrapher at Boylston, Alabama. The agency at Boylston is also responsible for whatever work there is at Cooks about 8 miles eastward where the station has been closed, the Carrier having abolished the position of the Agent-Telegrapher formerly employed there. Prior to July 3, 1950, Boylston was a one-man station, and Claimant handled all the work including that at Cooks. His work-week was from Monday through Friday, with working hours from 8 a.m. to 6 p.m. with an hour off for lunch. He thus worked 9 hours daily, one hour at the overtime rate. The station was closed Saturday and Sunday, and these were his assigned rest days. For any work that might be necessary on those days, he was subject to call in accordance with the Call Rule and the rules governing Service on Rest Days.

On July 3, 1950, the Carrier created a second position at Boylston occupied by a Clerk who was not covered by the Telegraphers' Agreement with the Carrier but by an Agreement with another craft of employees. The Clerks' work-week was also Monday through Friday, with assigned working hours from 1 P. M. to 9 P. M., and he too had Saturday and Sunday as rest days. About 5 weeks after this position was created, the Carrier reduced the working hours of the Claimant from 9 to 8 per day, thus eliminating the extra hour of overtime. There is no claim here, however, with respect to this. What is claimed is that the Carrier called the Clerk instead of the Agent-Telegrapher

to work on Saturdays and Sundays when work at that point increased because a gravel company reopened a gravel pit which had previously been closed.

Sometime before July 3, 1950, the gravel company notified the Carrier that effective that day, "they desired to bill cars and other empties through the Boylston agency after 6 P. M. daily. Further that they would require billing on Saturdays and in some instances on Sunday." To provide this service the Carrier established the Clerk's position at Boylston with working hours extending to 9 P. M. The Clerk performed the billing daily, Monday through Friday, and he was called for the Saturday work; also on some Sundays. This Saturday and Sunday work was performed by the Clerk during a period beginning with July 15, 1950, and ending September 18, 1951, when the gravel pit operations were discontinued. The Carrier abolished the Clerk's position effective September 14, and the next day being Saturday, it called the Agent-Telegrapher to do the work that day. With the abolition of the Clerk's position, Boylston became a one-man agency again.

The Saturdays and Sundays for which claims are made were days not part of any assignment. The Agreement between the parties in Section 1 (n) of Article 10 provides that work required on such days may be performed by an available extra employe who would otherwise not have 40 hours work that week, but "in all other cases by the regular employe." In the present case no extra employe was available, so the question to be determined is—who was the regular employe? The Employes claim that the Agent-Telegrapher was the regular employe; the Carrier's position is that the regular employe was the Clerk.

Before we can determine this question, however, it is necessary to consider an objection of the Carrier to the Division taking jurisdiction of this dispute because the craft of clerical employes has an interest in it and has not been given due notice of hearing. It states: "... a sustaining award would result in taking from a Clerical employe work which belongs to that craft. Therefore, we protest the rendering of a decision by the Board without notifying and calling the Brotherhood of Railway and Steamship Clerks to participate in the case as an interested party."

The Referee finds that this protest is based on an erroneous statement of fact. No award that is made in this case can have the result of taking away work from the Clerical craft. The evidence shows that the Carrier abolished the Clerk's position at Boylston on September 14, 1951, and the claim is for days prior to this date. Moreover, regardless of any decision in this case, the Carrier will continue to have the right to restore the Clerk's position at Boylston just as it had the right to establish it in 1950 and to abolish it in 1951. The only issue here is whether during the limited period when the Carrier chose to employ the Clerk, it violated its contract with the Telegraphers by diverting to him work that the contract prescribed shall be done by the Agent-Telegrapher. Under similar circumstances where claims were made for "a definite and closed period" after which the rights of the alleged third party could not be affected, this Division has ruled that the question of notice is moot. (Awards 6293 and 6357). The question is likewise moot in the present case, and the objection or protest must therefore be overruled.

Turning to the merits, the Carrier contends that on the Saturdays and Sundays here in question, the Clerk performed the same billing duties that he performed during his regular work-week, Monday through Friday. Therefore, it argues, he was properly used on his rest days to perform this work. The Telegraphers' contention is that communications of record were required on Saturdays and Sundays as on other days of the week when the Agent-Telegrapher does this work. They argue that the Agent-Telegrapher, in the absence of a regular relief employe or an available qualified extra employe, is "the regular employe" referred to in Section 1 (n) of Article 10, and further that their contract precluded the Clerk from doing such telegraphic work.

The evidence shows that communications of record were sent by the Clerk with respect to picking up or switching cars of glass, gravel, relay rails, yarn and boxes on the Saturdays and Sundays for which claim is made. These indicated the ownership of the cars which were ready for movement, their contents, and the various cities to which different cars were destined. There were also messages about picking up empty cars, and that specified numbers of hoppers, gondolas, and other cars were needed for loading on Sunday or Monday. All the messages were signed by the Clerk, except two on August 12, 1950, which were marked "/s/ H. L. Auston, Agent," who is the Claimant in this case. The Employees state these also were sent by the Clerk, and the Carrier does not deny the statement. An example of the communications sent by the Clerk is the following:

"Boylston, Ala.
Feb. 24, 1951.

"To No. 5 at Opeeka

Pick up ATSF 211272 carload of yarn at Mill and place
ATSF 30559 and DRGW 68917 at Duck Platform for duck
loading Saturday p.m.

Culpepper, Clerk"

The Carrier states that it "can neither affirm nor deny the correctness of dates and carload shipments listed" by the Employees in their submission. It goes on to say: ". . . the Petitioner refers to certain communications of record, purporting to be telegrams, one dated August 12, 1950, three on August 26, 1950, four on September 30, 1950, and two on February 24, 1951. If there were telegrams we cannot locate same, and if they were telephone conversations, the Dispatcher made no record of same. In any event, we do not concede that they were communications of record, as Dispatchers made no record of same on train sheet or elsewhere."

These are curious answers to the evidence presented by the Employees. The records of carload shipments and dates are in the possession of the Carrier. Since it is apparently unwilling to check its records and does not deny the evidence of shipments and dates presented by the Employees, we must accept this evidence as correct. With respect to the communications, we can hardly believe that a message like the one quoted above with numbers in it like 211272, 30559, 68917, and names of different cities to which cars were to go, could be remembered by anyone without writing them down. But if this message could be remembered, certainly another one sent by the Clerk on February 24, 1951, could not be; for this contained 27 such car numbers, with the initials of 17 different railroads, and the cars were destined to 12 different cities. Whether these messages were sent by telegram or telephone is immaterial to the issue here, for they are necessarily communications of record, which the Carrier's contract with the Telegraphers require that the Agent-Telegrapher shall handle. To say, as the Carrier does, that it cannot locate the telegrams, and if they were telephone conversations the Dispatcher made no record of them, is no denial of the correctness of the communications presented by the Employees.

We find that the evidence amply supports the claim that the Carrier violated its Agreement with the Telegraphers by calling the Clerk on the Saturdays and Sundays in question, and having him perform the duties of the Agent-Telegrapher. The Agent-Telegrapher (not the Clerk) was clearly "the regular employe" entitled to the work as prescribed by Article 10, Section 1 (n) of the Carrier's contract with the Telegraphers, even though there was billing work to be done as well.

Accordingly, 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 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

Carrier violated the Agreement as charged.

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.