

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines):

1. That the Carrier violated the rules of the current Agreement between the parties when it required or permitted an employe classified as "wire chief" to perform the regular assigned duties of a printer machine operator" in "BD" General Telegraph Office, San Francisco, California, September 13, 1951, Oct. 4, 1951 and October 6, 1951.

2. (a) Mr. J. R. Sulhoff, regular assigned printer machine operator, shall be paid 50 minutes at the overtime rate, September 13, 1951;

(b) Mr. A. M. Freeman, regular assigned printer machine operator shall be paid 2 hours and 3 minutes at the overtime rate, Oct. 4, 1951;

(c) Mr. B. O. Barton, extra printer machine operator, shall be paid 1 hour at the overtime rate October 16, 1951. Compensation to be at the rate covering position of printer machine operators, "BD" General Telegraph Office, San Francisco, California;

(d) On each date subsequent to October 16, 1951 that the violation of Agreement is permitted, the Carrier shall pay the available extra or regular printer machine operator, "BD" General Telegraph Office, the applicable compensation as provided for under the provisions of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the parties bearing a date of December 1, 1944 (reprinted March 1, 1951) including revisions. A copy of this agreement is on file with this Board and is hereby made a part of this dispute. On September 13, 1951, October 4, 1951 and October 16, 1951, due to a heavy file of telegraph business to be handled on printer machines and tape transmitters in "BD" General Telegraph Office, San Francisco, additional help was required in the class of work covered by the classification of printer machine operator. The Carrier required or permitted Mr. R. L. Kitchens, an employe regularly assigned to a position carrying only the classification of wire chief to perform the duties of operating tape transmitters, tape reperforators and printer machines (including teletypes), all of which are the normal routine duties traditionally

assignment at the time the overtime is to begin shall be given preference. If two (2) or more employees performing the same class of work have the same assigned hours and overtime is required, seniority choice shall govern or two (2) or more employees may be used simultaneously if the service requirements can be met in that manner."

It was not necessary to work any overtime on September 13, October 4, and 16, 1951; therefore Rule 20(f)-4 has no application to the claim in this docket.

Rule 41, quoted supra, lends no support to the instant claim, but as previously established, the language thereof supports the carrier's position that the performance of the work which gives rise to the dispute in this docket was not in violation of the agreement.

The petitioner is simply attempting to secure through an award of this Division an agreement provision over and above that which was agreed to by the parties. Inasmuch as the petitioner's position cannot be sustained by any rule of the agreement, but on the contrary, the carrier's action was clearly contemplated by the agreement and is in conformity with long-standing practice thereunder, the carrier respectfully submits that, within the meaning of the Railway Labor Act, the instant claim involves request for change in agreement, which is beyond the purview of this Board. To accept petitioner's position in this docket would definitely be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties.

The Division's attention is directed to the fact that on the dates involved the claimants had completed their tour of duty and were not deprived of any work that was secured to them by the current agreement.

CONCLUSION

The carrier asserts that it has conclusively established that the claim in this docket is without basis or merit and, therefore, respectfully submits that it is incumbent upon this Division to deny the claim.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: It is contended that on each of the stated dates a Wire Chief in the General Telegraph Office at San Francisco performed the work of a Printing Machine Operator resulting in the absorption of overtime belonging to the latter employees.

The so-called General Telegraph Offices are of a special group, five in number, designated in Rule 20, Sec. (3) of the Agreement. Positions at these locations are specified and comprise seven classes. Wire Chiefs and Printing Machine (including teletype) Operators are of separate classes. Rules 20 (f), 4 and 5 give employees in these classes the right to overtime. The provisions emphasized by the Employees read:

"4. When necessary to work overtime in any class of service, the senior employe in the class (regular or extra) who completes his assignment at the time the overtime is to begin shall be given preference. * * *

"5. * * * if no registered employe is available the occupant of the numbered position in that class whose starting time is nearest the hours that service is to be performed shall be used; * * *"
(Emphasis added.)

The Carrier, in connection with its broad claim that Wire Chiefs may operate Printer Machines, points to Rule 41, entitled Automatic Printer Machines, etc., reading:

"Section (a). Teletype and automatic printer machines, and other automatic mechanical devices used to transmit or receive communications of record, shall be operated by employes of one or another of the classes specified in Section (a) of Rule 1.

"NOTE—See Appendix for Interpretative Agreement, effective Dec. 1, 1944.

"Section (b). In offices where employes under this agreement are engaged, a telegrapher may be used to perform services as a printer machine operator, and likewise, a printer machine operator, if qualified, may be used to perform services as a telegrapher."

Section (a) of Rule 1 referred to above is the Scope Rule and lists both of the involved classifications separately therein.

It is our duty to bring into harmony the separate rules of the Agreement where possible. Section 41 (a), we find, can be reconciled with other rules of the Agreement. It would seem clear that its purpose is to set at rest any contention that the operation of the printer machine is the sole prerogative of any particular class of employes listed in the Scope Rule. In short, if an agent, or car distributor, for example, has need to resort to the use of a teletype or automatic printer machine in the performance of his duties as agent or car distributor, he may do so without rule violation.

Rule 41 (b) would seem intended as a rule of general application expressly providing for interchange of services as between telegrapher and qualified printing machine operators. This provision does not conflict with Rule 20 (b) which is a special rule applying to the five before-mentioned major telegraph offices, of which San Francisco is one. There we find listed as Class (5)—Morse Telegraphers—Printer Machine Operators. When an employe is not qualified as a telegrapher, it would appear that he would fall in Class (6)—Printer Machine (including teletype) Operators. Hence, the same interchange of services are provided but only in so far as telegraphers and printer machine operators are concerned. No similar interchange of services of Wire Chiefs and such operators are provided for or implied.

Simply because the use of the printer machine is opened by Rule 41 (a) to agents, car distributors and the occupants of other positions listed in the Scope Rule, including Wire Chiefs, does not mean that these employes may pass from class to class promiscuously and take over work customarily performed by the members of those other classes, particularly when its effect is to deprive the latter employes of overtime work. Otherwise, there would be little sense for the considerable particularity contained in Rule 20. At least in San Francisco, where the within dispute has its locale, a greater degree of specialization is recognized through the classifications set up and certain special provisions have been written into the rules to give class preference and protection within classes.

The Wire Chief, it is conceded, serves as an Assistant Manager in the Manager's absence. It is further recognized by the Employes that a Wire Chief's duties include the making of tests to ascertain if correct current values are maintained in various circuits operated within the testing territory and the correction of abnormal conditions which such tests may indicate. It is further conceded that the Wire Chief should be familiar in a general way with approved methods of testing and locating faults. To perform such duties he must, of course, operate the printer machine.

The burden then rests upon the Employes to demonstrate that the Wire Chief, in operating the printer machine on the dates of claim, was performing work of a substantive nature and was not merely testing and adjusting equipment.

First, let us dispose of the blanket claim for unspecified violations allegedly occurring after October 16, 1951. Obviously, this is not such a case as will lend itself to later application of uncontroverted facts to a principle once it is established by this Board. In such instances, as last mentioned, the Board has often upheld claims against the charge that they were vague and indefinite. What may have been done and the purpose served upon unspecified dates are too conjectural and controvertible to merit recognition in cases of the type of the one at hand, hence, that portion of the claim must be denied.

In respect to claims 2 (b) and (c), the Employes offer, by way of proof of transgression, the record of a single message transmitted by the Wire Chief on October 16. The fact of sending is not disputed. The purpose in sending, says the Carrier, was to correct the message and determine the cause of the previous error in transmitting the same. This explanation must stand in the absence of convincing evidence to the contrary. The Employes having failed to carry the burden of proof in connection with claims 2 (b) and (c), they, too, must be denied.

In support of claim 2 (a), the Employes present statements from three employes charging the Wire Chief with running tape, changing the line-up on the switchboard and requesting wires on the intercom upon three different and extended periods on September 13. These employes assert that work was done of the type usually performed by them. The total time allegedly involved was slightly over one and one-half hours which would seem an abnormally long time to test and correct equipment. Carrier's Exhibit "G" represents a denial of improper work on this date by the involved Wire Chief. That the Wire Chief was there, essentially, to expedite work, however, is inferred from that portion of his statement reading: "If the Supervisor had been on the job and not trying to turn in an unjustifiable claim, she would have had somebody back in Reperf Center to help." While the evidence submitted is conflicting, we believe that introduced upon behalf of the claimant is sufficient to sustain the claim of September 13, 1951, except that the same is payable, in line with past awards, at the pro rata rate.

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

That the Agreement was violated to the extent indicated in the Opinion.

AWARD

(a) Claim 1 sustained as to September 13, 1951; denied as to other dates.

(b) Claim 2 (a) sustained but at pro rata rate; additional claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 9th day of July, 1954.