

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY (Eastern Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway Company that:

(a) The Carrier violated agreements between the parties when, commencing with Sunday, June 1, 1947, it required the monthly-rated agent at Shawnee, Oklahoma to assume and perform the duties of the hourly-rated telegrapher clerk at that point on Sundays; and that

(b) For each such violation the Carrier shall now compensate the telegrapher-clerk, who was denied this work, the equivalent of what he would have earned for such service under the provisions of Section 2 of Mediation Agreement, Case A-2070.

EMPLOYES' STATEMENT OF FACTS: Schedule Agreement bearing effective date of December 1, 1938, and Mediation Agreement, Case A-2070, between the parties, are filed with the Board, and by this reference placed in evidence. The positions involved as of June 1, 1947 were:

Shawnee.....Agent	\$338.41 per month.
" Teleg-Clerk	1.145 per hour

Dating back to the establishment of the station at Shawnee, Oklahoma, the Carrier maintained a supervisory agent, whose duties were supervisory in fact, and one or more telegrapher positions. The supervisory agent's position was brought under the scope of the Telegraphers' Agreement by the following Memorandum of Agreement, effective November 3, 1943:

"Memorandum of Agreement, entered into at Topeka, Kansas, November 3, 1943 concerning the question of the following supervisory agencies:

Cushing, Oklahoma
Shawnee, Oklahoma

submitted to General Manager of the Eastern Lines by General Chairman Anderson under date of August 17, 1943, and considered in conference October 26 and November 2, 1943.

similar duties on other days of the week. Insofar as concerns the copying or handling of train orders, it will be obvious from the provisions of Article XIII of the Telegraphers' Agreement, effective December 1, 1938, reading:

"No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call."

that any employe covered by the Telegraphers' Agreement may handle train orders and **that no one of such employes has a monopoly or exclusive right to such work.**

It must also be remembered that Item 6 of the November 3, 1943 Memorandum of Agreement falls in the category of a special rule dealing with a special subject which the Board has consistently held must prevail over general rules. For example, see "Opinion of Board" in Third Division Award 4496, which read in part as follows:

"The Organization asserts that the claim is payable under the Overtime and Call Rules. With this we cannot agree. Whatever the rule may be when the Overtime and Call Rules stand alone, Rule 25 is the controlling rule under the present agreement. The Overtime and Call Rules are general rules dealing in general with the subjects they purport to cover. **Rule 25 is a specific rule dealing with a special subject. It is a general rule of contract construction that special rules prevail over general rules, leaving the latter to operate in the field not covered by the former.** We are obliged to say, therefore, that the Overtime and Call Rules do not control the situation here presented." (Emphasis added).

It is, therefore, apparent, that regardless of how other rules of the Agreement might, under different circumstances, be construed, the instant claim must be denied on the basis of Item 6 of the November 3, 1943 Memorandum of Agreement and the conclusions of the majority in Award 4496, quoted above. In other words, Item 6 is a special rule dealing with a special subject, i.e., the duties which might thereafter be required of the monthly rated Agent at Shawnee, as to which there were to be no restrictions. The Employees' claim is manifestly an attempt to revise or otherwise amend Item 6 of the November 3, 1943 Memorandum of Agreement, if not write it out of the Agreement entirely through the medium of an Award in the instant dispute. The Board has consistently recognized and adhered to the well established principle that it is only authorized to interpret Agreement rules as written and is without authority under the Amended Railway Labor Act to add to, take from or otherwise amend and revise Agreement rules by interpretation. See Third Division Awards 3407, 4763, 5079 and many others.

In conclusion, the Carrier respectfully reasserts that the Employees' claim in the instant dispute is entirely without support under the Agreement rules and should, for the reasons previously set forth herein, be either dismissed or denied in its entirety.

All that is contained herein is either known or available to the Employees or their representatives.

OPINION OF BOARD: An agent and clerk-telegrapher positions were in existence at Carrier's Shawnee station prior to May 25, 1947. The clerk-telegrapher was given a three-hour call on Sunday in order to take care of the telegraphing work. Effective Sunday, June 1, 1947 the Carrier discontinued the call and required the agent to perform the necessary telegraphing duties on Sundays. Claim is made on behalf of the occupant of the telegrapher-clerk position for having been deprived of the Sunday work from June 1, 1947 to September 1, 1949 (the effective date of the 40-hour week).

It appears that on November 3, 1943 the parties entered into an agreement under which the Agency at Shawnee was added to the wage schedule of the Telegraphers' Agreement but was to be exempted from the application of certain rules. Further, under that agreement the existing rates were not to be changed nor were the seniority rules to attach so long as the incumbents remained in the position. In the Agreement it was further provided "on and after the effective date of this Agreement there shall be no restrictions of the duties which may be required of the Agents listed in Paragraph 1 hereof." The Agent's position at Shawnee was one of the agents listed in Paragraph 1.

The condition which brought about the change in the Sunday call for the telegrapher-clerk was the death of the incumbent of the Agent's position and its subsequent assignment to a qualified telegrapher. The previous holder of the position was not so qualified.

The quoted portion of the November 3, 1943 Agreement in our opinion bars a recovery by the claimant in this instance. There can be no doubt that the provisions of that Agreement considered together with the language of the Scope Rule in the general Agreement effectively encompassed the Agent's position at Shawnee within the scope of the general Agreement. In so far as the right to perform covered work is concerned the agent was at least on a par with the telegrapher-clerk. Although conflicting, the evidence tends to establish that during the week in the absence of the clerk-telegrapher for meals, the agent performed work similar to the Sunday work subject of claim. Under these circumstances, the blanket discretion afforded Carrier in assigning duties to the agent by the aforesaid November 3, 1943 Agreement would clearly permit of his performing the Sunday work here involved.

Awards 5760 and 6688 involving the same parties relied upon by the employees are distinguishable from the instant case. In the former the November 3, 1943 Agreement was not involved. The latter turned upon the provisions of the forty-hour week Agreement.

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

That 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 29th day of November, 1954.