Award No. 6946
Docket No. TE-6671

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

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

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that the Carrier is in violation of the terms of the Agreement between the parties when,

1. It requires the agent-telegrapher at Stillwater, Oklahoma to suspend work on his own position on Monday of each week beginning with Monday, September 5, 1949 and reduces his assignment as agent-telegrapher to only four days each week.

2. It requires the agent-telegrapher on each Monday beginning with Monday, September 5, 1949, to perform rest day relief work and assume the duties of the telegrapher-ticket clerk position, on an assigned rest day of said telegrapher-ticket clerk, and

3. The Carrier shall now compensate the agent-telegrapher on the basis of eight hours at the straight time rate of his position for each week he is assigned to only four days on his regular position as agent-telegrapher, and

4. The Carrier shall now compensate the senior idle telegrapher on the district on the basis of eight hours at the straight time rate for each Monday the agent-telegrapher is used to perform rest day relief work on and assume the duties of the telegrapher-ticket clerk; or if no such idle extra telegrapher available then the carrier shall compensate the regular occupant of the telegrapher-ticket clerk position at Stillwater, Oklahoma on the basis of 8 hours at the time and one-half rate for each Monday the violative practice is continued.

EMPLOYES' STATEMENT OF FACTS: A supplemental Agreement bearing effective date of September 1, 1949, a Memorandum of Agreement signed at Chicago, September 13, 1950 (both covering rules adopted for the purpose of putting into effect the National Forty Hour Work Week Agreement of March 19, 1949) and an Agreement bearing effective date of June 1, 1951, the latter agreement contains all of the rules adopted to govern establishment of the 40 hour week.

nized and adhered to by the Board that the right to work is not the equivalent of work performed under the overtime and call rules of an Agreement. See Awards 4244, 4645, 4728, 4815, 5195, 5437, 5764, 5929, 5967 and many others.

In conclusion, the Carrier respectfully reasserts that the claim of the Employes in the instant dispute is entirely without merit or support under the Agreement rules and should be denied in its entirety.

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

(Exhibits not reproduced.)

OPINION OF BOARD: At Stillwater, Oklahoma, there are two positions subject to the Telegraphers' Agreement. Prior to September 1, 1949, one was assigned under the designation of Agent, 8:00 A. M. to 5:00 P. M., exclusive of meal hour, Monday through Saturday, with Sunday as rest day. The other was assigned as Telegrapher-Ticket Clerk, 9:00 A. M. to 6:00 P. M., exclusive of meal hour, Monday through Saturday, with Sunday as rest day. On September 1, 1949, the Agent-Telegrapher occupied a 5-day position and the Telegrapher-Ticket Clerk was continued as a 6-day position. The Carrier reclassified the position of Agent to Agent-Telegrapher and assigned the regular occupant 8:00 A. M. to 5:00 P. M., exclusive of meal period, Monday through Friday, with Saturday and Sunday as rest days. The Telegrapher-Ticket Clerk was assigned 9:00 A. M. to 6:00 P. M., exclusive of meal period, Tuesdays through Saturdays, with Sundays and Mondays as rest days. The Monday rest day of the 6-day Telegrapher-Ticket Clerk was filled by requiring the Agent-Telegrapher to perform the necessary work of that position on that day in addition to the work of his own assignment. The Telegrapher-Ticket Clerk performed the necessary duties of the Agent-Telegrapher on Saturdays. The Organization contends that this use of the Agent-Telegrapher to perform the work of the Telegrapher-Ticket Clerk on Mondays and the use of the Telegrapher-Ticket Clerk to perform the work of the Agent-Telegrapher on Saturdays, under the circumstances shown, is in violation of the 40-Hour Work Week Agreement as it was incorporated into the current Agreement on this Carrier.

One of the contentions of the Organization is that the Carrier improperly suspended the occupant of the Agent-Telegrapher position on Mondays and required him to perform relief work on those days on the Telegrapher-Ticket Clerk position. It claims a day's pay for the Agent-Telegrapher at the straight time rate of his position for each Monday he is required to perform the duties of the Telegrapher-Ticket Clerk position. There is no merit in this claim. The Agent-Telegrapher worked the assigned hours of his position. He performed work within the craft and class to which he belonged. He was paid for five days work. We fail to see how the Agent-Telegrapher was in any manner injured by the assignments as made. If he was improperly used to relieve a regular assigned rest day of another position, the loss of work accrues to the employe who was entitled to perform it, not to the one who has been paid for performing it. This portion of the claim is wholly lacking in merit.

The question raised as to whether or not the occupant of a position may be used on one of his regularly assigned days to do work on a rest day of a different position having different duties by combining such necessary duties with those of his own position, is a wholly different matter. The Division appears to have passed on the question several times with conflicting results. We shall attempt to resolve the issue by a careful and complete consideration of the applicable rules and the intendments of the parties that may be drawn therefrom.

The Organization relies primarily upon the following rules, the pertinent parts of which are:

"Section 6. The Carriers will establish, effective September 1, 1949, for all employes, subject to the exceptions contained in the Sections 6-22, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the carriers' operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions of this Agreement: * * *." Article 3, Sec. 6, Current Agreement

"Section 14. 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." Article 3, Sec. 14, Current Agreement

Other rules are relied upon which we do not deem necessary to quote. We shall refer to their provisions when the need arises. The Carrier relies substantially upon the same agreement provisions. The dispute grows out of the different meanings which the parties have gathered from identical language.

The situation at Stillwater, briefly is: The Telegrapher-Clerk was assigned Tuesday through Saturday and the Agent-Telegrapher was assigned Monday through Friday, after September 1, 1949. On Mondays and Saturdays each was required to do whatever work was necessary to be done, including some of the duties of the other. Both employes belonged to the Telegraphers craft, were in the same seniority district, were carried on the same seniority roster, and each was qualified to perform the work of the other. The positions were not identical and the rates of pay were different. The Organization asserts that the assignments are violative of agreement rules and claim is made for reparations on that basis.

The record and briefs are long and the awards cited are numerous. We cannot hope to exhaustively discuss each phase of the case in detail. We shall confine the opinion to a statement of our conclusions and a concise exposition of the reasons upon which they rest.

It will be noted that the staggering of work weeks is an integral part of Article III, Section 6. It is clearly of equal importance with the establishment of the 40 hour week itself. In other words, the establishing of the 40 hour week with two rest days in seven and the staggering of work weeks in accordance with the carriers' operational requirements are the two primary provisions of the 40 Hour Week Agreement, even though they are subject to other provisions of that agreement. It is plain that the right to stagger work weeks to meet carriers' operational requirements was of equal importance with the establishment of the 40 hour work week itself. We must conclude that the establishment of the 40 hour week without a reduction in weekly pay carried with it the idea that the carriers could eliminate certain unnecessary employes through the process of staggering work weeks. It was one of the compensating factors that was of advantage to the carriers when they agreed to the 40 hour work week with the same pay as the previous six day week. Award 5545.

The next question that naturally follows is what positions might be staggered to accomplish the purposes of the agreement. It is clear, we think, that a position within the scope of one craft could not be staggered with a position under another craft when the work is the exclusive work of one. Two positions occupied by a signalman and a telegrapher, for instance, could not be staggered as craft lines are not wiped out by the 40 Hour Week Agreement. Neither could two employes in the same craft holding positions in different seniority districts be staggered under this agreement; nor may two positions in different classes be staggered where common seniority

between the classes does not exist. But where classes are established within a craft for purposes other than the establishment of seniority rights, positions in the two classes may properly be staggered if each is qualified to perform the work of the other. If these are the proper concepts contained in the 40 Hour Week Agreement, and we think they are, the Carrier had the right to stagger the two positions in the dispute before us. The fact that Carrier changed the duties of the positions as of September 1, 1949, in order that the positions could be staggered to meet operational needs is not a material fact. Either party may do these things which the contract permits for any reason that he deems sufficient.

The claim that the rest days of six day positions must be filled under the circumstances here shown is without merit. It was clearly contemplated that work weeks could be staggered in accordance with the carriers' operational requirements in order to reduce the costs of operation. It is only when carriers' operations require rest days to be worked that the rules governing rest day work come into play. When work on rest days of six and seven day positions is required, the carriers are obligated under Section 10-a to establish all possible relief assignments with five days of work. Such regular relief assignments are not required to be established except where carriers' operational requirements make them necessary.

Where work remains to be performed on unassigned days remaining after all regular relief assignments have been made which are possible to be made, Section 14 provides that it may be performed by an available extra or unassigned employe who will otherwise not have 40 hours of work that week and, in all other cases, by the regular employe. This rule means just what it says, as we have consistently held, and when the work involved falls within its terms, the Carrier has no alternative method of getting the work done. But in the case before us, the Carrier procured the performance of all necessary work on the days involved by the expedient of staggering the work weeks of the Agent-Telegrapher and the Telegrapher-Ticket Clerk. Under such circumstances the rules governing regular relief assignments and work on unassigned days have no application. We have repeatedly held, and correctly we think, that the assignment of regular relief positions and of work on unassigned days is not a condition precedent to the staggering of work weeks. The meaning of the 40 Hour Work Week Agreement is quite the contrary; the Carrier may procure the performance of all necessary work that it can by the staggering of work weeks before the assignment of rest day work comes into the picture. It is clear therefore that the Carrier did not violate the Agreement under the facts and circumstances shown in the present case.

The foregoing conclusions are sustained generally by Awards 5545, 5555, 5557, 6001, 6002, 6042, 6075, 6184, 6212, 6216, 6232, 6602. Awards 1528, 1565, 1566, 1644, 1669 Second Division.

The position of the Organization has support under some of the previous holdings of the Board. We feel obligated under such circumstances, to point out our reasons for not accepting the interpretation it places upon the Agreement.

It is pointed out that since the origin of "rest days" as we now understand them, the idea has prevailed that work on rest days should be assigned to a regular relief employe; or if there is no such employe available, to an extra employe; and if there is neither a relief or extra employe available, then the regular employe is to be used on an overtime basis. For the purposes of this case, we accept this statement as being correct on this Carrier prior to September 1, 1949, under the provisions of Mediation Agreement A-2070. We grant, also, that the same provisions relative to rest day work were retained after the advent of the 40 hour week **when rest day rules became applicable under that agreement.** But they did not become applicable until the expedient of staggering work weeks was first applied to meet operational needs. If the work necessary to be performed can be done through the expedient of staggering work weeks of regularly assigned employe, the

necessity for rest day relief assignments does not exist. The relationship of Mediation Agreement A-2070 to the present situation is discussed in Award 6184 and although the discussion is in connection with a dispute on another carrier, the general holdings of that award control the situation before us. We necessarily conclude that rest day work is to be assigned just as it was prior to the 40 Hour Week Agreement when it is necesary to be assigned.

The Carrier asserts that the language "all possible regular relief assignments * * * will be established to do the work necessary on rest days" contained in Section 10-a, means that relief positions need not be established unless they are necessary and that the staggering of work weeks permits the combining of rest day work with the work of another position. The Organization strongly excepts to this construction. But nonetheless, the position of the Carrier is the correct one when it is applied within the limitations which we have heretofore set out. We quite agree that there is work to be performed on each day of a six day position, but rest day assignments are necessary only when staggering of regular five day work week assignments will not meet the needs of carriers' operations. To hold otherwise would be to deprive the Carrier of a rule it bought in agreeing to the 40 hour week with pay on a 48 hour basis.

The remaining contentions of the Organization can be disposed of by a consideration of Awards 6688 and 6690. These awards were prepared by Referee William M. Leiserson who served on the Emergency Board which recommended the 40 Hour Week Agreement and on the Arbitration Board which drafted the National Agreement. This background, and other similar experience, is pointed to by the Organization as a reason why his expressed views should be finally accepted by this Board. That the experience of this referee is evidence of his qualifications to serve in the capacity for which he was chosen is beyond question. Any award written by him, however, is subject to the same scrutiny as that of any other referee, as to the reasoning and logic purporting to sustain the result reached. It is needless for us to say that a written agreement which is plain and unambiguous, ought to be enforced according to its terms. It is conclusively presumed that all previous contentions and disputes have been merged in the agreement as written and executed by the parties. The integrity of written agreements requires that they be enforced in accordance with the meaning expressed when it can be ascertained from the instrument itself. Our position with regard to this situation is stated in Award 6856.

We point out that no effect is given to the right of Carrier to stagger work weeks in Award 6688. The award holds: "We cannot agree that it does have the right so to combine the two assignments of different classifications so that on Saturday one employe will perform the duties of both". We quite agree with this controlling provision if the "different classifications" do not have common seniority. This is the meaning given the provision in Award 6184 which we think is the correct one. It must be borne in mind that classifications of employes may be made on trifling differences for many different reasons. The classifications which are of interest here are those which have some relation to the issue before us. A classification for pay purposes or the exercise of orderly displacements is not such. It is classifications for purposes of seniority only that have application here. It appears from Award 6688 that the employes involved were of the same craft, in the same seniority district, carried on the same seniority roster, were in classes having common seniority, and were qualified to perform the work involved. Under such circumstances, we cannot agree with the result reached. We think the right to stagger work weeks in accordance with carriers' operational requirements contemplates that such positions may be staggered for the very purpose of avoiding the assignment of rest day work which is not necessary to the economic and efficient operation of the railroad. We cannot agree with the holdings of Award 6688 with reference to carriers' right to stagger work weeks or with the interpretation placed upon classes or classifications of work. Award 6690 appears to have adopted the

same erroneous conclusions. We think the foregoing awards fail to consider the overall purpose of the 40 Hour Week Agreement. They fail to consider all of the provisions of that Agreement and give stress to particular provisions which create an illusory result. A part of the bargain for a five day week at the then existing pay for six days' work, was the right of the Carrier to eliminate the necessary rest day work to the extent that it could by the expedient of staggering work weeks.

We hold that Carrier assigned the Agent-Telegrapher and the Telegrapher-Ticket Clerk at Stillwater in accordance with Agreement provisions. No basis for an affirmative award exists.

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 not violated.

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 March, 1955.